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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2019/833 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 May 2019

laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation, amending Regulation (EU) 2016/1627 and repealing Council Regulations (EC) No 2115/2005 and (EC) No 1386/2007

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) One of the objectives of the Common Fisheries Policy, as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council ⁽³⁾, is to ensure exploitation of marine biological resources that provides sustainable economic, environmental and social conditions.
- (2) By means of Council Decision 98/392/EC ⁽⁴⁾, the Union approved the United Nations Convention on the Law of the Sea and the 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, which contain principles and rules with regard to the conservation and management of the living resources of the sea. In the framework of its wider international obligations, the Union takes part in efforts made in international waters to conserve fish stocks.
- (3) The Union is party to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries ('the Convention'), approved by Council Regulation (EEC) No 3179/78 ⁽⁵⁾. An amendment to the Convention was adopted on 28 September 2007 and approved by Council Decision 2010/717/EU ⁽⁶⁾.

⁽¹⁾ Opinion of 23 January 2019.

⁽²⁾ Position of the European Parliament of 17 April 2019 (not yet published in the Official Journal) and decision of the Council of 14 May 2019.

⁽³⁾ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

⁽⁴⁾ Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.6.1998, p. 1).

⁽⁵⁾ Council Regulation (EEC) No 3179/78 of 28 December 1978 concerning the conclusion by the European Economic Community of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (OJ L 378, 30.12.1978, p. 1).

⁽⁶⁾ Council Decision 2010/717/EU of 8 November 2010 on the approval, on behalf of the European Union, of the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (OJ L 321, 7.12.2010, p. 1).

- (4) The Northwest Atlantic Fisheries Organisation (NAFO) has the authority to adopt legally binding decisions for the conservation of fishery resources under its purview. Those decisions are essentially addressed to the NAFO Contracting Parties, but also contain obligations for the operators (for example the master of the vessel). Upon their entry into force, the NAFO conservation and enforcement measures (CEM) are binding on all NAFO Contracting Parties and, in the case of the Union, are to be incorporated into Union law to the extent to which they are not already covered by Union law.
- (5) Council Regulation (EC) No 1386/2007 ⁽⁷⁾ transposed the CEM into Union law.
- (6) Council Regulation (EC) No 2115/2005 ⁽⁸⁾ established a recovery plan for the Greenland halibut stock in NAFO Subarea 2 and Divisions 3KLMNO.
- (7) The CEM have been amended by every annual meeting of NAFO Contracting Parties since 2008. The new provisions need to be incorporated into Union law, including conservation measures for certain species, protection of vulnerable marine ecosystems, inspection procedures at sea and in port, vessel requirements, monitoring of fishing activities and additional port State measures.
- (8) Taking into consideration that certain provisions of the CEM are being amended more frequently by NAFO Contracting Parties and are likely to be amended further in the future, in order to swiftly incorporate into Union law future amendments to the CEM, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the following aspects: list of activities of research vessels; measures relating to Northern prawn fishing; change of fishery depths and references to restricted or closed areas; procedures concerning authorised vessels with more than 50 tonnes live weight total catch on board taken outside the Regulatory Area entering the area to fish for Greenland halibut and preconditions for beginning to fish for Greenland halibut; content of the electronic transmission, list of valid documents to be carried on board the vessels and the content of capacity plans; documentation to be carried on board vessels on chartering arrangements; the vessel monitoring system (VMS) data; provisions on electronic reporting and on the content of notifications; and obligations of the master of the vessel during inspection. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽⁹⁾. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (9) The Commission, representing the Union at NAFO meetings, agrees annually to a number of purely technical provisions of the CEM, in particular concerning format and content of information exchange, scientific terminology or closures of vulnerable areas. The Commission should also adopt a delegated act supplementing this Regulation with those provisions of, and Annexes to, the CEM, and should be empowered to amend it.
- (10) Regulations (EC) No 2115/2005 and (EC) No 1386/2007 should therefore be repealed.
- (11) In November 2018, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted Recommendation 18-02 establishing a management plan for bluefin tuna that will enter into force on 21 June 2019. Recommendation 18-02 repeals Recommendation 17-07, which amended Recommendation 14-04 establishing a recovery plan for bluefin tuna that was implemented in Union law by means of Regulation (EU) 2016/1627 of the European Parliament and of the Council ⁽¹⁰⁾. Recommendation 18-02 contains more flexible provisions than those implemented in Regulation (EU) 2016/1627.
- (12) The Commission plans to adopt a proposal for a Regulation for the purpose of implementing Recommendation 18-02 during the first quarter of 2019. It is unlikely that the co-legislators will adopt that Regulation before the entry into of force of Recommendation 18-02.

⁽⁷⁾ Council Regulation (EC) No 1386/2007 of 22 October 2007 laying down conservation and enforcement measures applicable in the Regulatory Area of the Northwest Atlantic Fisheries Organisation (OJ L 318, 5.12.2007, p. 1).

⁽⁸⁾ Council Regulation (EC) No 2115/2005 of 20 December 2005 establishing a recovery plan for Greenland halibut in the framework of the Northwest Atlantic Fisheries Organisation (OJ L 340, 23.12.2005, p. 3).

⁽⁹⁾ OJ L 123, 12.5.2016, p. 1.

⁽¹⁰⁾ Regulation (EU) 2016/1627 of the European Parliament and of the Council of 14 September 2016 on a multiannual recovery plan for bluefin tuna in the eastern Atlantic and the Mediterranean, and repealing Council Regulation (EC) No 302/2009 (OJ L 252, 16.9.2016, p. 1).

- (13) During a technical meeting on ICCAT issues on 11 December 2018, Member States expressed their wish to implement at least certain provisions of Recommendation 18-02 relating to by-catches, farming and fishing capacity and open seasons from 21 June 2019, to ensure a level playing field between all operators catching bluefin tuna. In addition, there are new reinforced control provisions, including for intra-farming random controls, live trade and farming practices, that Member States are also to implement from 21 June 2019, on the basis of shared competence on that policy.
- (14) In order to ensure a level playing field between Union fishing vessels and other fleets fishing for bluefin tuna, the ICCAT measures laid down in Recommendation 18-02 relating to by-catches, farming and fishing capacity and open seasons should be included in Regulation (EU) 2016/1627.
- (15) Regulation (EU) 2016/1627 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation, unless otherwise provided, applies to Union fishing vessels used or intended for use for the purposes of commercial fishing activities conducted on fishery resources in the NAFO Regulatory Area, as defined in Annex I to the Convention, as well as activities by third country vessels under the Convention in Union waters or territory.
2. This Regulation applies without prejudice to the obligations in existing regulations in the fisheries sector, in particular Regulation (EU) 2017/2403 of the European Parliament and of the Council ⁽¹⁾ and Council Regulations (EC) No 1005/2008 ⁽²⁾ and (EC) No 1224/2009 ⁽³⁾.
3. Unless otherwise provided in this Regulation, Union research vessels shall not be restricted by conservation and management measures pertaining to the catching of fish, in particular concerning mesh size, size limits, closed areas and seasons.

Article 2

Subject matter

1. This Regulation lays down the rules for the application by the Union of the CEM for their uniform and effective implementation within the Union.
2. Furthermore, this Regulation amends certain provisions of Regulation (EU) 2016/1627.

Article 3

Definitions

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

- (1) 'the Convention' means the 1979 Convention on Cooperation in the Northwest Atlantic Fisheries, as amended from time to time;

⁽¹⁾ Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

⁽²⁾ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

⁽³⁾ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

- (2) 'the Convention Area' means the area to which the Convention applies as described in Article IV, paragraph 1 thereof. The Convention Area is divided into scientific and statistical Subareas, Divisions and Subdivisions listed in Annex I to the Convention;
- (3) 'the Regulatory Area' means that part of the Convention Area which is beyond national jurisdiction;
- (4) 'fishery resources' means all fish, molluscs and crustaceans within the Convention Area excluding:
 - (a) sedentary species over which coastal States may exercise sovereign rights in accordance with Article 77 of the United Nations Convention on the Law of the Sea; and
 - (b) in so far as they are managed under other international treaties, anadromous and catadromous stocks and highly migratory species listed in Annex I to the United Nations Convention on the Law of the Sea;
- (5) 'fishing activities' means harvesting or processing fishery resources, landing or transshipping of fishery resources or products derived from fishery resources, or any other activity in preparation for, in support of, or relating to the harvesting of fishery resources in the Regulatory Area, including:
 - (a) the actual or attempted searching for or catching of fishery resources;
 - (b) any activity that can reasonably be expected to result in locating, catching or harvesting of fishery resources for any purpose; and
 - (c) any operation at sea in support of, or in preparation for, any activity described in this definition but not including any operations relating to emergencies involving the health and safety of the crew members or the safety of a vessel;
- (6) 'fishing vessel' means any Union vessel that is or has been engaged in fishing activities, and includes fish processing vessels, and vessels engaged in transshipment or any other activity in preparation for or relating to fishing activities, or in experimental or exploratory fishing activities;
- (7) 'research vessel' means a vessel permanently used for research or a vessel normally used for fishing activities or fisheries support activity that is temporarily used for fisheries research;
- (8) 'CEM' means conservation and enforcement measures in force as adopted by the NAFO Commission;
- (9) 'fishing opportunities' means fishing quotas allocated to a Member State by a Union act in force for the Regulatory Area;
- (10) 'EFCA' means the European Fisheries Control Agency as established by Regulation (EU) 2019/473 of the European Parliament and of the Council ⁽¹⁴⁾;
- (11) 'fishing day' means any calendar day or any fraction of a calendar day in which a fishing vessel is present in any Division in the Regulatory Area;
- (12) 'port' means, inter alia, offshore terminals and other installations for landing, transshipping, packaging, processing, refuelling or resupplying;
- (13) 'non-Contracting Party vessel' means a vessel flying the flag of a State that is not a Contracting Party to NAFO or is not a Member State, or a vessel suspected to be without nationality;
- (14) 'transshipment' means transfer, over the side, from one fishing vessel to another, of fishery resources or products;
- (15) 'mid-water trawl' means trawl gear that is designed to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear shall not include discs, bobbins or rollers on its footrope or any other attachments designed to make contact with the bottom, but it may have chafing gear attached;
- (16) 'vulnerable marine ecosystems' or 'VMEs' means the VMEs referred to in paragraphs 42 and 43 of the Food and Agriculture Organisation (FAO) International Guidelines for the Management of Deep-Sea Fisheries in the High Seas;

⁽¹⁴⁾ Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency (OJ L 83, 25.3.2019, p. 18).

- (17) 'footprint', otherwise known as 'existing bottom fishing areas', means that portion of the Regulatory Area where bottom fishing has historically occurred, and is defined by the coordinates shown in Table 4 and illustrated in Figure 2 of the CEM referred to in points 1 and 2 of the Annex to this Regulation;
- (18) 'bottom fishing activities' means any activity where the fishing gear is in contact with or is likely to be in contact with the seafloor during the normal course of fishing operations;
- (19) 'processed fish' means any marine organism that has been physically altered since capture, including fish that has been filleted, gutted, packaged, canned, frozen, smoked, salted, cooked, pickled, dried or prepared for market in any other manner;
- (20) 'exploratory bottom fishing activities' means bottom fishing activities conducted outside the footprint, or within the footprint with significant changes to the conduct or in the technology used in the fishery;
- (21) 'VME indicator species' means the species that signal the occurrence of VMEs, as specified in Part VI of Annex I.E to the CEM referred to in point 3 of the Annex to this Regulation;
- (22) 'IMO number' means a 7-digit number, which is assigned to a vessel under the authority of the International Maritime Organisation;
- (23) 'inspector', unless otherwise specified, means an inspector of the fishery control services of a NAFO Contracting Party assigned to the Joint Inspection and Surveillance Scheme referred to in Chapter VII;
- (24) 'IUU fishing' means the activities described in the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing adopted by the FAO;
- (25) 'fishing trip' for a fishing vessel includes the time from its entry into until its departure from the Regulatory Area and continues until all catch on board from the Regulatory Area has been landed or transhipped;
- (26) 'FMC' means a land-based fisheries monitoring centre of the flag Member State;
- (27) 'IUU vessel list' means the list established in accordance with Articles 52 and 53 of the CEM;
- (28) 'significant adverse impacts' means the significant adverse impacts referred to in paragraphs 17 to 20 of the FAO International Guidelines for the Management of Deep Sea Fisheries in the High Seas;
- (29) 'VME indicator element' means the VME indicator element referred to in topographical, hydrophysical or geological features which potentially support VMEs, as specified in Part VII of Annex I.E to the CEM referred to in point 4 of the Annex to this Regulation;
- (30) 'observer' means a person who is authorised and certified by a Member State or a Contracting Party to observe, monitor and collect information on board fishing vessels.

CHAPTER II

CONSERVATION AND MANAGEMENT MEASURES

Article 4

Research vessels

1. A research vessel shall not:
 - (a) conduct fishing activities inconsistent with its research plan; or
 - (b) catch Northern prawn in Division 3L in excess of the allocation of the flag Member State of the vessel.
2. Not less than 10 days prior to the commencement of a fishery research period, the flag Member State shall:
 - (a) by electronic transmission in the format prescribed in Annex II.C to the CEM referred to in point 5 of the Annex to this Regulation, notify the Commission of all research vessels flying its flag it has authorised to conduct research activities in the Regulatory Area; and
 - (b) provide the Commission with a research plan for all vessels flying its flag authorised to conduct research, including the purpose, location and, for vessels temporarily engaged in research, the dates during which the vessel will be engaged as a research vessel.

3. The flag Member State shall immediately notify the Commission of the termination of research activities by any vessel temporarily engaged in research.
4. The flag Member State shall notify the Commission of any changes to the research plan not less than 10 days before the date those changes become effective. The research vessel shall maintain a record of the changes on board.
5. Vessels engaged in research shall at all times keep on board a copy of the research plan in the English language.
6. The Commission shall forward the information notified by flag Member States in accordance with paragraphs 3, 4 and 5 to the NAFO Executive Secretary not later than seven days before the commencement of the fishery period or, in the case of changes to the research plan, seven days before the date any change to the research plan becomes effective.

Article 5

Catch and effort limitations

1. Each Member State shall ensure that all catch and/or effort limitations shall apply to stocks identified in fishing opportunities in force, and, unless otherwise stated, all quotas shall be expressed as live weight in metric tonnes.
2. Member States may permit fishing vessels flying their flag to fish for stocks in which it has not been allocated a quota in accordance with the fishing opportunities in force (the 'Others' quota), if such quota exists and notification of closure has not been given by the NAFO Executive Secretary.
3. For stocks identified in the fishing opportunities in force caught within the Regulatory Area by vessels flying its flag, each flag Member State shall:
 - (a) ensure that all species from stocks listed in fishing opportunities in force caught by vessels flying its flag are counted against the quota allocated to that Member State, including the by-catch of redfish in Division 3M taken between the date when it is estimated that 50 % of the total allowable catch (TAC) of redfish in Division 3M is taken and 1 July;
 - (b) ensure that no more redfish caught in Division 3M is retained on board vessels flying its flag after the date when it is estimated that 100 % of the TAC of redfish in Division 3M is taken, with the exception of redfish caught in Division 3M before the closure;
 - (c) notify the Commission and EFCA of the names of Union vessels that intend to fish the 'Others' quota at least 48 hours in advance of each entry, and after a minimum of 48 hours of absence from the Regulatory Area. That notification shall, if possible, be accompanied by an estimate of the projected catch. That notification shall be posted on the NAFO Monitor, Control and Surveillance (MCS) website.
4. For any one haul, the species which comprises the largest percentage, by weight, of the total catch in the haul shall be considered as being taken in a directed fishery for the stock concerned.

Article 6

Closures of fisheries

1. Each Member State shall:
 - (a) close its fishery for stocks listed in the fishing opportunities in force in the Regulatory Area on the date on which the available data indicate that the total quota allocated to that Member State for the stocks concerned will be taken, including the estimated quantity to be taken prior to the closure of the fishery, discards, and estimated unreported catch by all vessels flying the flag of that Member State;
 - (b) ensure that vessels flying its flag immediately cease fishing activities that may result in catch when notified by the Commission in accordance with paragraph 3 that the quota allocated to that Member State has been fully taken. If the Member State can demonstrate that it still has quota available for that stock in accordance with paragraph 2, the vessels of that Member State may resume fishing on that stock;
 - (c) close its fishery for Northern prawn in Division 3M when the number of fishing days allocated to that Member State is reached. The number of fishing days in respect of each vessel shall be determined using VMS positional data within Division 3M, with any part of a day being considered a full day;

- (d) close its directed fishery for redfish in Division 3M between the date the accumulated reported catch is estimated to reach 50 % of the TAC of redfish in Division 3M, as notified in accordance with paragraph 3, and 1 July;
 - (e) close its directed fishery for redfish in Division 3M on the date the accumulated reported catch is estimated to reach 100 % of the TAC of redfish in Division 3M, as notified in accordance with paragraph 3;
 - (f) promptly notify the Commission of the date of closure provided for in points (a) to (e);
 - (g) prohibit vessels flying its flag from continuing a directed fishery in the Regulatory Area for a particular stock under an 'Others' quota beyond 5 days of notification by the NAFO Executive Secretary, as transmitted by the Commission, that it is estimated that that particular 'Others' quota has been taken, in accordance with paragraph 3;
 - (h) ensure that no vessel flying its flag commences a directed fishery in the Regulatory Area for a particular stock under the 'Others' quota following notification by the NAFO Executive Secretary that it is estimated that that particular quota has been taken, in accordance with paragraph 3;
 - (i) after a closure of its fishery in accordance with this paragraph, ensure that no more fish of the stock concerned is retained on board the vessels flying its flag unless otherwise authorised by this Regulation.
2. A fishery that has been closed in accordance with paragraph 1 may be re-opened within 15 days of notification by the Commission following communication with the NAFO Executive Secretary:
- (a) if the NAFO Executive Secretary confirms that the Commission has demonstrated that there is remaining quota available from its original allocation; or
 - (b) if a quota transfer from another NAFO Contracting Party, in accordance with fishing opportunities, results in additional quota for the particular stock subject to closure.
3. The Commission shall promptly notify the Member States of the date of closure referred to in paragraph 1.

Article 7

By-catch retained on board

1. The master of the vessel, including of a vessel chartered in accordance with Article 23, shall ensure that the vessel minimises by-catch of species from stocks identified in its respective fishing opportunities in force while operating in the Regulatory Area.
2. A species listed in the fishing opportunities in force shall be classified as by-catch when it is taken in a Division where any of the following situations exist:
- (a) no quota has been allocated to that Member State for that stock in that Division, in accordance with the fishing opportunities in force;
 - (b) a ban on fishing for that particular stock is in force (moratoria); or
 - (c) the 'Others' quota for a particular stock has been fully taken, following notification by the Commission in accordance with Article 6.
3. The master of the vessel, including of a vessel chartered in accordance with Article 23, shall ensure that the vessel limits the retention on board of species classified as by-catch to the maxima specified below:
- (a) for cod in Division 3M, redfish in Divisions 3LN and witch flounder in Divisions 3NO: 1 250 kg or 5 %, whichever is the greater;
 - (b) for cod in Divisions 3NO: 1 000 kg or 4 %, whichever is the greater;
 - (c) for all other stocks listed in fishing opportunities where no specific quota has been allocated to the Member State: 2 500 kg or 10 %, whichever is the greater;
 - (d) where a ban on fishing applies (moratoria), or when the 'Others' quota opened for that stock has been fully taken: 1 250 kg or 5 %, whichever is the greater;

- (e) once the directed fishery for redfish in Division 3M is closed in accordance with point (d) of Article 6(1): 1 250 kg or 5 %, whichever is the greater;
 - (f) while conducting a directed fishery for yellowtail in Divisions 3LNO: 15 % of American plaice; otherwise the by-catch provisions set out in point (d) shall apply.
4. The limits and percentages provided for in paragraph 3 are calculated by Division as the percentage, by weight, for each stock of the total catch of stocks listed in fishing opportunities in force retained on board for that Division at the time of inspection, on the basis of the fishing logbook figures.
5. The calculation of groundfish by-catch levels in paragraph 3 shall not include the catches of Northern prawn in the total catch on board.

Article 8

Exceeding by-catch limits in any one haul

1. The master of the vessel shall ensure that the vessel:
 - (a) does not conduct directed fisheries for species referred to in Article 7(2);
 - (b) complies with the following requirements, where, with the exception of directed fishery for Northern prawn, the weight of any species subject to the by-catch limits exceeds the greater of the limits specified in Article 7(3) in any one haul:
 - (i) immediately move a minimum of 10 nautical miles from any position of the previous tow/set throughout the subsequent tow/set;
 - (ii) leave the Division and not return for at least 60 hours if the by-catch limits specified in Article 7(3) are again exceeded following the first tow/set after moving in accordance with point (i);
 - (iii) undertake a trial tow for a maximum duration of 3 hours before starting a new fishery following an absence of at least 60 hours. If the stocks subjected to by-catch limits form the largest percentage, by weight, of the total resulting catch in the haul, this shall not be considered as a directed fishery for those stocks, and the vessel shall immediately change position in accordance with points (i) and (ii); and
 - (iv) identify any trial tow conducted in accordance with point (b) and record in the fishing logbook the coordinates pertaining to the start and end locations of any trial tow conducted.
2. In a directed fishery for Northern prawn, the move referred to in points (i) and (ii) of point (b) of paragraph 1 shall apply when, for any one haul, the total quantity caught of the groundfish stocks listed in fishing opportunities in force exceeds 5 % in Division 3M or 2,5 % in Division 3L.
3. When a vessel is conducting a directed fishery for skate with a legal mesh size appropriate for that fishery, the first time that catches of stocks for which by-catch limits apply, as specified in Article 7(2), comprise the largest percentage by weight of the total catch in a haul, such catches shall be considered as incidental catch, but the vessel shall immediately move as specified in paragraph 1 of this Article.
4. The percentage of by-catch in any one haul is calculated as the percentage, by weight, for each stock listed in the fishing opportunities in force of the total catch from that haul.

Article 9

Northern prawn

1. For the purpose of this Article, Division 3M includes that portion of Division 3L enclosed by lines joining the points described in Table 1 and depicted in Figure 1(1) of the CEM referred to in point 6 of the Annex to this Regulation.
2. A vessel fishing for Northern prawn and other species on the same trip shall transmit a report to the Commission signalling the change of fishery. The number of fishing days shall be calculated accordingly.
3. Fishing days referred to in this Article shall not be transferable between NAFO Contracting Parties. Fishing days of one NAFO Contracting Party may be utilised by a vessel flying the flag of another NAFO Contracting Party only in accordance with Article 23.

4. No vessel shall fish for Northern prawn in Division 3M between 00:01 Coordinated Universal Time (UTC) on 1 June and 24:00 UTC on 31 December in the area as described in the Table 2 and depicted in Figure 1(2) of the CEM referred to in point 7 of the Annex to this Regulation.
5. All fishing for Northern prawn in Division 3L shall take place at depths greater than 200 metres. Fishing in the Regulatory Area shall be restricted to an area east of a line bound by the coordinates described in Table 3 and depicted in Figure 1(3) of the CEM referred to in point 8 of the Annex to this Regulation.
6. Each vessel that has fished for Northern prawn in Division 3L, or its representatives on its behalf, shall provide the competent port authority with at least 24 hours prior notice of its estimated time of arrival and the estimated quantities on board of Northern prawn by Division.

Article 10

Greenland halibut

1. The following measures apply to vessels 24 metres or greater in length overall engaged in the Greenland halibut fishery in Subarea 2 and Divisions 3KLMNO:
 - (a) each Member State shall allocate its quota for Greenland halibut among its authorised vessels;
 - (b) an authorised vessel shall land its Greenland halibut catch only in a designated port of a NAFO Contracting Party. To that end, each Member State shall designate one or more ports in its territory where authorised vessels may land Greenland halibut;
 - (c) each Member State shall send to the Commission the name of every port it has so designated. Any subsequent changes to the list shall be sent in replacement of the previous one not less than 20 days before the change comes into effect. The Commission shall post the information on the NAFO MCS website;
 - (d) at least 48 hours before its estimated time of arrival in port, an authorised vessel or its representative on its behalf shall advise the port's competent fisheries control authority of its estimated time of arrival, the estimated total quantity of Greenland halibut retained on board, and information on the Division or Divisions where the catches were taken;
 - (e) each Member State shall inspect each landing of Greenland halibut in its ports and prepare an inspection report in the format prescribed in Annex IV.C to the CEM referred to in point 9 of the Annex to this Regulation, and send it to the Commission with EFCA in copy, within 12 working days from the date on which the inspection was completed. The report shall identify and provide details of any infringement of this Regulation detected during the port inspection. It shall include all relevant information available with regard to infringements detected at sea during the current trip of the inspected fishing vessel. The Commission shall post the information on the NAFO MCS website.
2. The following procedures apply with respect to authorised vessels with more than 50 tonnes live weight total catch on board taken outside the Regulatory Area entering the Regulatory Area to fish for Greenland halibut:
 - (a) the master of the vessel shall notify the NAFO Executive Secretary by email or fax, at the latest 72 hours prior to the vessel's entry into the Regulatory Area, of the amount of catch on board, the position by latitude and longitude where the master of the vessel intends to commence fishing, the estimated time of arrival at the position, and contact information for the fishing vessel (for example radio, satellite phone or email);
 - (b) an inspection vessel that intends to inspect a fishing vessel before it begins fishing for Greenland halibut shall notify that fishing vessel and the NAFO Executive Secretary of the coordinates of a designated inspection point that is no more than 60 nautical miles from the position where the master of the vessel estimates that the vessel will commence fishing and shall inform other inspection vessels that may be operating in the Regulatory Area accordingly;
 - (c) a fishing vessel notified in accordance with point (b) shall:
 - (i) proceed to the designated inspection point; and
 - (ii) ensure that the stowage plan for catch on board on entry to the Regulatory Area meets the requirements of Article 25(5) and is made available to inspectors upon request;

- (d) a fishing vessel may not begin fishing before being inspected in accordance with this Article, unless:
 - (i) it receives no notification within 72 hours of the notification it has transmitted in accordance with point (a); or
 - (ii) within 3 hours of its arrival at the designated inspection point, the inspection vessel has not begun the intended inspection.
- 3. The landings of Greenland halibut from non-Contracting Party vessels that have engaged in fishing activities in the Regulatory Area are prohibited.

Article 11

Squid

Fishing for squid between 00:01 UTC on 1 January and 24:00 UTC on 30 June in Subareas 3 and 4 shall be prohibited.

Article 12

Conservation and management of sharks

1. Member States shall report all catches of sharks, including available historical data, in accordance with the catch and fishing effort reporting procedures set out in Article 25.
2. For all observed hauls that contain Greenland shark, observers shall record the number, estimated weight and measured length (estimated length if measured length is not possible) per haul or set, the sex, and catch disposition (alive, dead or unknown) of each individual Greenland shark.
3. It shall be prohibited to:
 - (a) remove shark fins on board vessels;
 - (b) retain on board, tranship or land shark fins fully detached from a carcass.
4. Without prejudice to paragraph 1, in order to facilitate on-board storage, shark fins may be partially sliced through and folded against the carcass.
5. No fishing vessel shall retain on board, tranship or land any fins harvested in contravention of this Article.
6. In fisheries that are not directed at sharks, each Member State shall encourage every vessel flying its flag to release sharks alive, and especially juveniles, that are not intended for use as food or subsistence.
7. Member States shall, where possible:
 - (a) undertake research to identify ways to make fishing gear more selective for the protection of sharks;
 - (b) conduct research on key biological and ecological parameters, life-history, behavioural traits and migration patterns, as well as on the identification of potential mapping, pupping and nursery grounds of key shark species.
8. Member States shall provide the results of such research to the Commission, for transmission to the NAFO Executive Secretary.

Article 13

Mesh sizes

1. For the purpose of this Article, mesh size shall be measured, using gauges specified by Commission Regulation (EC) No 517/2008 ⁽¹⁵⁾, in accordance with Annex III.A to the CEM referred to in point 10 of the Annex to this Regulation.

⁽¹⁵⁾ Commission Regulation (EC) No 517/2008 of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets (OJ L 151, 11.6.2008, p. 5).

2. No vessel shall fish with a net having a mesh size smaller than prescribed for each of the following species:
 - (a) 40 mm for Northern prawns and prawns (PRA);
 - (b) 60 mm for short finned squid (SQI);
 - (c) 280 mm in the codend and 220 mm in all other parts of the trawl for skate (SKA);
 - (d) 130 mm for all other groundfish, as listed in Annex I.C of CEM referred to in point 11 of the Annex to this Regulation;
 - (e) 100 mm for pelagic *Sebastes mentella* (REB) in Subarea 2 and Divisions 1F and 3K; and
 - (f) 90 mm for redfish (RED) in the fishery using mid-water trawls in Divisions 3O, 3M and 3LN.
3. A vessel conducting a fishery for a species referred to in paragraph 2 of this Article that has on board nets having a mesh size smaller than that specified in that paragraph, shall ensure such nets are securely lashed and stowed and are not available for immediate use during that fishery.
4. A vessel conducting a directed fishery for species other than those identified in paragraph 2 of this Article is, however, permitted to take regulated species with nets having a mesh size less than that specified in that paragraph, provided that the by-catch requirements laid down in Article 7(3) are complied with.

Article 14

Use of attachments and marking of gear

1. Strengthening ropes, splitting straps and codend floats may be used on trawls, as long as those attachments do not in any way restrict the authorised mesh or obstruct the mesh opening.
2. No vessel shall use any means or device that obstructs or diminishes the size of the meshes. However, vessels may attach devices described in Annex III.B Authorised Topside Chafers/Shrimp Toggle Chains of the CEM referred to in point 12 of the Annex to this Regulation, to the upper side of the codend in a manner that does not obstruct the meshes of the codend including any lengtheners. Canvas, netting or other material may be attached to the underside of the codend of a net only to the extent required to prevent or minimise damage to the codend.
3. Vessels fishing for Northern prawn in Division 3L or 3M shall use sorting grids or grates with a maximum bar spacing of 22 mm. Vessels fishing for Northern prawn in Division 3L shall also be equipped with toggle chains with a minimum length of 72 cm as measured in accordance with Annex III.B to the CEM referred to in point 12 of the Annex to this Regulation.
4. When fishing in the areas referred to in Article 18(1), only mid-water trawl gear is allowed.
5. No fishing vessel shall:
 - (a) use gear that is not marked in accordance with generally accepted international standards, in particular the 1967 Convention on Conduct of Fishing Operations in the North Atlantic; or
 - (b) deploy any marker buoy or similar object floating on the surface and intended to indicate the location of fixed fishing gear without displaying the vessel's registration number.

Article 15

Lost or abandoned fishing gear, retrieval of fishing gear

1. The master of the vessel fishing in the Regulatory Area shall:
 - (a) have equipment on board the fishing vessel to retrieve lost gear;
 - (b) if the gear or part of it is lost, make every reasonable attempt to retrieve it as soon as possible; and
 - (c) not deliberately abandon fishing gear, except for safety reasons.

2. If the lost gear cannot be retrieved, the master of the vessel shall notify the flag Member State within 24 hours of the following:
 - (a) the name and call sign of the vessel;
 - (b) the type of lost gear;
 - (c) the quantity of gear lost;
 - (d) the time when the gear was lost;
 - (e) the position where the gear was lost; and
 - (f) the measures taken by the vessel to retrieve the lost gear.
3. Following retrieval of lost gear, the master of the vessel shall notify the flag Member State within 24 hours of the following:
 - (a) the name and call sign of the vessel that has retrieved the gear;
 - (b) the name and call sign of the vessel that lost the gear (if known);
 - (c) the type of gear retrieved;
 - (d) the quantity of gear retrieved;
 - (e) the time when the gear was retrieved; and
 - (f) the position where the gear was retrieved.
4. The Member State shall without delay notify the Commission of the information referred to in paragraphs 2 and 3, for transmission to the NAFO Executive Secretary.

Article 16

Minimum fish size requirements

1. No vessel shall retain on board any fish smaller than the minimum size established in accordance with Annex I.D to the CEM referred to in point 13 of the Annex to this Regulation, which it shall immediately return to the sea.
2. Processed fish which is below a length equivalent prescribed for that species in Annex I.D to the CEM referred to in point 13 of the Annex to this Regulation shall be considered to derive from fish that is smaller than the minimum fish size prescribed for that species.
3. Where the number of undersized fish in a single haul exceeds 10 % of the total by number of fish in that haul, the vessel shall for its next tow maintain a minimum distance of 5 nautical miles from any position of the previous tow.

CHAPTER III

PROTECTION OF VMES IN THE REGULATORY AREA FROM BOTTOM FISHING ACTIVITIES

Article 17

Map of footprint (existing bottom fishing areas)

The map of existing bottom fishing areas in the Regulatory Area illustrated in Figure 2 of the CEM referred to in point 2 of the Annex to this Regulation, is delimited on the western side by the Canadian Exclusive Economic Zone boundary and on the eastern side by the coordinates shown in Table 4 of the CEM referred to in point 1 of the Annex to this Regulation.

Article 18

Area restrictions for bottom fishing activities

1. Until 31 December 2020, no vessel shall engage in bottom fishing activities in any of the areas illustrated in Figure 3 of the CEM referred to in point 14 of the Annex to this Regulation, and defined by connecting the coordinates specified in Table 5 of the CEM referred to in point 15 of the Annex to this Regulation, in their numerical order and back to coordinate 1.

2. Until 31 December 2020, no vessel shall engage in bottom fishing activities in the area of Division 3O illustrated in Figure 4 of the CEM referred to in point 16 of the Annex to this Regulation, and defined by connecting the coordinates specified in Table 6 of the CEM referred to in point 17 of the Annex to this Regulation, in their numerical order and back to coordinate 1.
3. Until 31 December 2020, no vessel shall engage in bottom fishing activities in areas 1-13 illustrated in Figure 5 of the CEM referred to in point 18 of the Annex to this Regulation, and defined by connecting the coordinates specified in Table 7 of the CEM referred to in point 19 of the Annex to this Regulation, in numerical order and back to coordinate 1.
4. Until 31 December 2018, no vessel shall engage in bottom fishing activities in area 14 illustrated in Figure 5 of the CEM referred to in point 18 of the Annex to this Regulation, and defined by connecting the coordinates specified in Table 7 of the CEM referred to in point 19 of the Annex to this Regulation, in their numerical order and back to coordinate 1.

Article 19

Exploratory bottom fishing activities

1. Exploratory bottom fishing activities shall be subject to a prior exploration conducted in accordance with the exploratory protocol set out in Annex I.E to the CEM referred to in point 20 of the Annex to this Regulation.
2. Member States whose vessels wish to engage in exploratory bottom fishing activities shall, for the purpose of the evaluation:
 - (a) communicate to the Commission the 'Notice of Intent to Undertake Exploratory Bottom Fishing' in accordance with Annex I.E to the CEM referred to in point 21 of the Annex to this Regulation, together with the assessment required under Article 20(1);
 - (b) provide to the Commission an 'Exploratory Bottom Fishing Trip Report' in accordance with Annex I.E to the CEM referred to in point 22 of the Annex to this Regulation, within two months of the completion of the exploratory bottom fishing activities.
3. The master of the vessel shall:
 - (a) start exploratory bottom fishing activities only after being authorised in accordance with the conservation and management measures adopted by the NAFO Commission to prevent significant adverse impacts of the exploratory fishing activities on VMEs;
 - (b) have a scientific observer on board for the duration of the exploratory bottom fishing activity.

Article 20

Preliminary assessment of proposed exploratory bottom fishing activities

1. A Member State proposing to participate in exploratory bottom fishing activities shall submit, in support of its proposal, a preliminary assessment of the known and anticipated impacts of the bottom fishing activity, which will be exercised by the vessels flying its flag, on VMEs.
2. The preliminary assessment referred to in paragraph 1 shall:
 - (a) be sent to the Commission not less than one week in advance of the opening of the June meeting of the NAFO Scientific Council;
 - (b) address the elements for assessment of proposed exploratory bottom fishing activities in accordance with Annex I.E to the CEM referred to in point 23 of the Annex to this Regulation.

Article 21

Encounters with VME indicator species

1. An encounter with VME indicator species is defined as catch per set (for example trawl tow, longline set, or gill net set) of more than 7 kg of sea pens and/or 60 kg of other live coral and/or 300 kg of sponges.

2. Each Member State shall require that masters of vessels flying its flag and conducting bottom fishing activities in the Regulatory Area quantify the catch of VME indicator species, where evidence of VME indicator species, in accordance with Part VI of Annex I.E to the CEM referred to in point 3 of the Annex to this Regulation, are encountered during the course of fishing operations.

3. If the quantity of VME indicator species caught in the fishing operation referred to in paragraph 2 (such as trawl tow or set of a gill net or longline) is beyond the threshold defined in paragraph 1, the master of the vessel shall:

- (a) report the encounter without delay to the competent authority of the flag Member State including the position that is provided by the vessel, either the end point of the tow or set or another position that is closest to the exact encounter location, the VME indicator species encountered, the quantity (kg) of VME indicator species encountered; and
- (b) cease fishing and move away at least 2 nautical miles from the endpoint of the tow/set in the direction least likely to result in further encounters. The master of the vessel shall use his best judgment based on all available sources of information.

4. Each Member State shall require that an observer with sufficient scientific expertise be deployed in accordance with point (b) of Article 19(3) for the areas outside the footprint who shall:

- (a) identify corals, sponges and other organisms to the lowest possible taxonomical level, using the 'Exploratory Fishery Data Collection Form' in accordance with Annex I.E to the CEM referred to in point 24 of the Annex to this Regulation; and
- (b) deliver the results of such identification to the master of the vessel to facilitate the quantification referred to in paragraph 2 of this Article.

5. Each Member State shall:

- (a) forward, without delay, the encounter information reported by the master of the vessel to the Commission if the quantity of the VME indicator species caught in a fishing operation (such as trawl, tow, set, of a gill net or longline) is beyond the threshold defined in paragraph 1;
- (b) issue an immediate alert of the encounter to all fishing vessels flying its flag; and,
- (c) temporarily close, where possible, a two mile radius around any reported VME encounter location outside the footprint upon notification by the Commission.

The Commission may reopen temporarily closed areas upon notification from NAFO.

CHAPTER IV

VESSEL REQUIREMENTS AND CHARTERING

Article 22

Vessel requirements

1. Each Member State shall notify the Commission of the following by electronic means:

- (a) a list of vessels flying its flag which it may authorise to conduct fishing activities in the Regulatory Area ('notified vessels'), in the format prescribed in Annex II.C1 to the CEM referred to in point 25 of the Annex to this Regulation;
- (b) any deletion from the list of notified vessels, without delay, in the format prescribed in Annex II.C2 to the CEM referred to in point 26 of the Annex to this Regulation.

2. No fishing vessel shall be permitted to conduct fishing activities in the Regulatory Area unless:

- (a) it is listed as a notified vessel;
- (b) it has been issued with an IMO number; and
- (c) it has been issued with an authorisation by the flag Member State to conduct such fishing activities ('authorised vessel').

3. No Member State shall authorise a fishing vessel flying its flag to conduct fishing activities in the Regulatory Area unless it is able to exercise effectively its flag State duties in respect of such vessel.

4. Each Member State shall manage the number of authorised vessels and their fishing effort in a manner that takes due account of the fishing opportunities available to that Member State in the Regulatory Area.

5. Each Member State shall transmit to the Commission by electronic means:

- (a) the individual authorisation for each vessel on the list of notified vessels it has authorised to conduct fishing activities in the Regulatory Area, in the format specified in Annex II.C3 to the CEM referred to in point 27 of the Annex to this Regulation and not later than 40 days before the start of the fishing activities for the calendar year;

Each authorisation shall in particular identify the start and end dates of validity and, the species for which directed fishery is allowed, unless exempted in Annex II.C3 to the CEM referred to in point 27 of the Annex to this Regulation. If the vessel intends to fish for regulated species referred to in fishing opportunities in force, the identification shall refer to the stock, where the regulated species is associated with the area concerned;

- (b) the suspension of the authorisation, in the format prescribed in Annex II.C4 to the CEM referred to in point 28 of the Annex to this Regulation, without delay, in case of removal of the authorisation concerned or of any modification to its content, where the removal or the modification occurs during the period of validity;

- (c) the resumption of a suspended authorisation, transmitted in accordance with the procedure set out in point (a).

6. Each Member State shall ensure that the period of validity of the authorisation matches with the certification period concerning the certification of the capacity plan referred to in paragraphs 10 and 11.

7. Every fishing vessel shall bear markings that are readily identified in accordance with internationally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

8. No fishing vessel shall operate in the Regulatory Area without carrying on board current valid documents issued by the competent authority of the flag Member State, at a minimum establishing the following particulars concerning the vessel:

- (a) its name, if any;
- (b) the letter(s) of the port or district in which it is registered, if any;
- (c) the number(s) under which it is registered;
- (d) the IMO number;
- (e) its international radio call sign, if any;
- (f) the names and addresses of the owner(s) and, where applicable, the charterers;
- (g) its length overall;
- (h) its engine power;
- (i) the capacity plan referred to in paragraph 10; and
- (j) estimation of freezing capacity or certification of refrigeration system.

9. No fishing vessel shall conduct fishing activities in the Regulatory Area without carrying on board an accurate up-to-date capacity plan, certified by a competent authority or recognised by its flag Member State.

10. The capacity plan shall:

- (a) take the form of a drawing or description of its fish storage place, including the storage capacity of each fish storage place in cubic metres and the drawing shall consist of longitudinal section of the vessel, including a plan for each deck on which a fish storage place is located and the locations of freezers;
- (b) show in particular the positions of any door, hatch and any other access to each fish storage place, with reference to the bulkheads;

- (c) indicate the main dimensions of the fish storage tanks (refrigerated sea water tanks) and, for each one, indicating the calibration in cubic metres at intervals of 10 cm; and
 - (d) have the true scale clearly indicated on the drawing.
11. Each Member State shall ensure that, every two years, the capacity plan of its authorised vessels is certified correct by the competent authority.

Article 23

Chartering arrangements

1. For the purpose of this Article, 'chartering Contracting Party' shall refer to the Contracting Party that holds an allocation as indicated in Annex I.A and Annex I.B to the CEM, or the Member State that holds a fishing opportunities allocation, and 'flag Member State' shall refer to the Member State in which the chartered vessel is registered.
2. All or part of the fishing allocation of a chartering Contracting Party can be harvested using a chartered authorised vessel ('chartered vessel') flying the flag of a Member State, subject to the following conditions:
 - (a) the flag Member State has consented in writing to the chartering arrangement;
 - (b) the chartering arrangement is limited to one fishing vessel per flag Member State in any calendar year;
 - (c) the duration of the fishing operations under the chartering arrangement does not exceed six months cumulatively in any calendar year; and
 - (d) the chartered vessel is not a vessel that has previously been identified as having engaged in IUU fishing.
3. All catch and by-catch taken by the chartered vessel in accordance with the chartering arrangement shall be attributed to the chartering Contracting Party.
4. The flag Member State shall not authorise the chartered vessel, when conducting fishing operations under the chartering arrangement, to fish any of the flag Member State's allocations or under another charter at the same time.
5. No transshipment at sea may be carried out without the prior authorisation of the chartering Contracting Party, which shall ensure that it is carried out under the supervision of an observer on board.
6. The flag Member State shall notify the Commission in writing prior to the start of the chartering arrangement of its consent to the chartering arrangement.
7. The flag Member State shall notify the Commission immediately upon the occurrence of any of the following events:
 - (a) start of fishing operations under the chartering arrangement;
 - (b) suspension of fishing operations under the chartering arrangement;
 - (c) resumption of fishing operations under a chartering arrangement that has been suspended;
 - (d) end of fishing operations under the chartering arrangement.
8. The flag Member State shall maintain a separate record of catch and by-catch data from fishing operations in accordance with every charter of a vessel flying its flag and report them to the chartering Contracting Party and the Commission.
9. The chartered vessel shall at all times carry the following documentation:
 - (a) the name, flag State registration, IMO number and flag State of the vessel;
 - (b) previous name(s) and flag State(s) of the vessel, if any;
 - (c) the name and address of the owner(s) and operators of the vessel;
 - (d) a copy of the chartering arrangement and any fishing authorisation or licence the chartering Contracting Party has issued to the chartered vessel; and
 - (e) the allocation assigned to the vessel.

CHAPTER V

MONITORING OF FISHERIES*Article 24***Product labelling requirements**

1. When processed, all species harvested in the Regulatory Area shall be labelled in such a way that each species and product category is identifiable. All species must be labelled using the following data:
 - (a) the name of the capture vessel;
 - (b) the 3-Alpha Code for each species as listed in Annex I.C to the CEM referred to in point 11 of the Annex to this Regulation;
 - (c) in the case of Northern prawns, the date of capture;
 - (d) the Regulatory Area and Division of fishing; and
 - (e) the product form presentation code as listed in Annex II.K to the CEM referred to in point 29 of the Annex to this Regulation.
2. Labels shall be securely affixed, stamped or written on packaging at the time of stowage and be of a size that can be read by inspectors in the normal course of their duties.
3. Labels shall be marked in ink on a contrasting background.
4. Each package shall contain only:
 - (a) one product form category;
 - (b) one Division of capture;
 - (c) one date of capture (in the case of Northern prawns); and
 - (d) one species.

*Article 25***Monitoring of catch**

1. For the purposes of monitoring catch, each fishing vessel shall have a fishing logbook, a production logbook and a stowage plan to record fishing activities in the Regulatory Area.
2. Each fishing vessel shall maintain a fishing logbook that is retained on board for at least 12 months and in accordance with Annex II.A to the CEM referred to in point 30 of the Annex to this Regulation, and that:
 - (a) accurately records the catch of each tow/set relating to the smallest geographical area for which a quota has been allocated;
 - (b) indicates the disposition of the catch of each tow/set, including the amount (in kg, live weight) of each stock that is retained on board, discarded, offloaded, or transhipped during the current fishing trip.
3. Each fishing vessel shall maintain a production logbook that is retained on board for at least 12 months and that:
 - (a) records the daily cumulative production for each species and product type in kg for the preceding day from 00:01 UTC until 24:00 UTC;
 - (b) relates the production of each species and product type to the smallest geographical area for which a quota has been allocated;
 - (c) lists the conversion factors used to convert production weight of each product type into live weight when recorded in the fishing logbook;
 - (d) labels each entry in accordance with Article 24.

4. Each fishing vessel shall, with due regard for safety and navigational responsibilities of the master of the vessel, stow all catch taken in the Regulatory Area separately from all catch taken outside the Regulatory Area, and ensure that such separation is clearly demarcated using plastic, plywood or netting.
5. Each fishing vessel shall maintain a stowage plan that:
- (a) clearly shows:
 - (i) the location and quantity, expressed as product weight in kg, of each species within each fish hold;
 - (ii) the location in each hold of shrimp taken in Division 3L and in Division 3M, including the quantity of shrimp in kg, by Division;
 - (iii) the top view of product within each fish hold;
 - (b) is updated daily for the preceding day from 00:01 to 24:00 UTC; and
 - (c) is retained on board until all catches have been unloaded completely from the vessel.
6. Every fishing vessel shall transmit electronically, in accordance with the format and the content prescribed for each type of report in Annex II.D and Annex II.F to the CEM referred to in points 31 and 32 of the Annex to this Regulation, to its FMC reports as regards the following:
- (a) catch on entry (COE): quantity of catch on board by species upon entry into the Regulatory Area, transmitted at least six hours in advance of the vessel's entry;
 - (b) catch on exit (COX): quantity of catch on board by species upon exit from the Regulatory Area transmitted at least six hours in advance of the vessel's exit;
 - (c) catch report (CAT): quantity of catch retained and quantity discarded by species for the day preceding the report, by Division, including nil catch returns, sent daily before 12:00 UTC; nil catch retained and nil discards of all species shall be reported using the 3 alpha code MZZ (marine species not specified) and quantity as '0' as the following examples demonstrate (//CA/MZZ 0//and//RJ/MZZ 0//);
 - (d) catch on board (COB): for any vessel fishing Northern prawn in Division 3L, prior to entry or exit from Division 3L, transmitted one hour prior to crossing the boundary of Division 3L;
 - (e) transhipment (TRA):
 - (i) by donor vessel, transmitted at least twenty four hours in advance of the transhipment; and
 - (ii) by receiving vessel, not later than one hour after the transhipment.
 - (f) port of landing (POR): by a vessel that has received a transhipment at least twenty four hours in advance of any landing.

Catch of species listed in Annex I.C to the CEM for which the total live weight on board is less than 100 kg, may be reported using the 3 alpha code MZZ (marine species not specified), except in the case of sharks. All sharks shall be reported at the species level under their corresponding 3 alpha code presented in Annex I.C to the CEM or, if not contained in Annex I.C to the CEM or in the FAO ASFIS List of Species for Fishery Statistics, to the extent possible. When species specific reporting is not possible, shark species shall be recorded as either large sharks (SHX) or dogfishes (DGX), as appropriate and in accordance with the 3-alpha codes presented in Annex I.C to the CEM referred to in point 11 of the Annex to this Regulation. The estimated weight of each shark caught per haul or set shall also be recorded.

7. The reports referred to in paragraph 6 may be cancelled by means of a cancel report in the format specified in Annex II.F(8) to the CEM referred to in point 32 of the Annex to this Regulation. If any of those reports is subject to correction, a new report shall be sent without delay after the cancel report within the time limits set out in this Article.

The flag State FMC shall communicate its acceptance of the report cancellation from vessels flying its flag to the Commission without delay.

8. Each Member State shall ensure that its FMC, immediately upon receipt, transmits electronically the reports referred to in paragraph 6 to the NAFO Executive Secretary in the format prescribed in Annex II.D to the CEM referred to in point 31 of the Annex to this Regulation, with the Commission and EFCA in copy.

9. Each Member State shall:

- (a) report its provisional monthly catches by species and stock area, and its provisional monthly fishing days for the fishery of Northern prawn in Division 3M, whether or not it has quota or effort allocations for the relevant stocks; it shall transmit those reports to the Commission within 20 days of the end of the calendar month in which the catch was taken;
- (b) ensure that logbook information is submitted in either Extensible Markup Language (XML) or in a Microsoft Excel file format, to the Commission containing at a minimum the information outlined in Annex II.N to the CEM referred to in point 33 of the Annex to this Regulation, within 60 days following the completion of each fishing trip.

Article 26

Vessel monitoring system (VMS)

1. Each fishing vessel operating in the Regulatory Area shall be equipped with a satellite monitoring device capable of continuous automatic transmission of position to its land-based FMC, at least once an hour, with the following VMS data:

- (a) vessel identification;
- (b) most recent vessel position, by latitude and longitude, having an error tolerance margin no greater than 500 metres and a confidence interval of 99 %;
- (c) UTC date and time of the fixing of the position; and
- (d) vessel course/heading and speed.

2. Each Member State shall ensure that its FMC:

- (a) receives the position data referred to in paragraph 1 and records them using the following 3 letter codes:
 - (i) 'ENT', first VMS position transmitted by each vessel upon entering the Regulatory Area;
 - (ii) 'POS', every subsequent VMS position transmitted by each vessel from within the Regulatory Area; and
 - (iii) 'EXI', first VMS position transmitted by each vessel upon exiting the Regulatory Area;
- (b) is equipped with computer hardware and software for automatic data processing and electronic data transmission and applies back-up and recovery procedures and records the data received from fishing vessels in computer readable form that it maintains for not less than three years; and
- (c) notifies the Commission and EFCA of the FMC name, address, telephone, telex, email or facsimile numbers and any subsequent changes without delay.

3. Each Member State shall assume all costs associated with its own VMS.

4. Where an inspector observes a fishing vessel in the Regulatory Area and has not received data in accordance with paragraph 1, 2 or 8 that inspector shall inform the master of the vessel and the Commission.

5. The Member State shall ensure that the master of the vessel or the owner of a fishing vessel flying its flag or its representative is informed when the vessel's satellite monitoring device appears to be defective or non-functioning.

6. Where the satellite monitoring device fails, the master of the vessel shall ensure it is repaired or replaced within one month following such failure, or, where a fishing trip lasts more than one month, the repair or the replacement is completed upon the vessel's next entry into port.

7. No fishing vessel may commence a fishing trip with a defective satellite monitoring device.

8. Every fishing vessel operating with a defective satellite monitoring device, shall transmit, at least once every 4 hours, the VMS position data to its flag Member State FMC by other available means of communication, in particular, satellite, email, radio, facsimile or telex.

9. The flag Member State shall ensure that:
 - (a) its FMC transmits VMS position data to the NAFO Executive Secretary with the Commission and EFCA in copy, as soon as possible, but not later than 24 hours after it receives them and may authorise fishing vessels flying its flag to transmit VMS position data by satellite, email, radio, facsimile or telex, direct to the NAFO Executive Secretary; and
 - (b) the VMS position data transmitted to the NAFO Executive Secretary are in conformity with the data exchange format set out in Annex II.E to the CEM referred to in point 34 of the Annex to this Regulation and further described in Annex II.D to the CEM referred to in point 31 of the Annex to this Regulation.
10. Each Member State may use NAFO VMS data for search and rescue or for the purpose of maritime safety.

CHAPTER VI

OBSERVER SCHEME

Article 27

Observer programme

1. Observers shall be independent and impartial, and have the training, knowledge, skills and abilities to perform all of the duties, functions and requirements as specified in this Article. Observers shall execute their duties and functions in an unbiased manner regardless of nationality and of which flag the vessel is flying, and shall be free from undue influence or benefit linked to the fishing activity of any vessel fishing in the Regulatory Area.
2. Without prejudice to the exception in paragraph 3, each fishing vessel, while conducting fishing activities in the Regulatory Area, shall carry at all times at least one observer in accordance with the provisions of the observer programme. A fishing vessel shall not commence fishing until the observer is deployed on the fishing vessel. The failure to carry an observer if required shall be considered a serious infringement.
3. By way of derogation from paragraph 2, and provided that NAFO has not requested a higher observer coverage level, a Member State may allow fishing vessels flying its flag to carry an observer for less than 100 %, but not less than 25 % of the fishing trips conducted by its fleet, or of the days the fishing vessels are present in the Regulatory Area during the year, on the condition that the flag Member State, for the vessels not carrying an observer:
 - (a) ensures that the vessels concerned target species in areas where negligible by-catch of other species is expected to occur;
 - (b) ensures that the vessel complies with all real-time reporting requirements;
 - (c) physically inspects or otherwise evaluates as appropriate, following risk assessment, each landing in its ports by the vessel concerned according to national monitoring, control and surveillance procedures. If any infringement to this Regulation is detected and confirmed, it shall prepare an inspection report in the format prescribed in Annex IV.C to the CEM referred to in point 9 of the Annex to this Regulation and transmit it to the Commission as soon as possible after the infringement has been confirmed;
 - (d) as early as possible in advance of the fishing trip, transmits to the Commission the following information:
 - (i) the name, IMO number, and international radio call sign of the vessel;
 - (ii) the factors that support the decision to grant the derogation from the 100 % coverage;
 - (e) submits to the Commission by 15 February each year, for the previous calendar year, a report containing a comparison of all relevant fishing activities showing the difference between the trips where the vessel had an observer on board and those where the observer was withdrawn. The Commission shall transmit that information to the NAFO Executive Secretary by 1 March each year.
4. Where an inspector issues a notice of an infringement to a fishing vessel that is not carrying an observer, except where the absence of an observer is in accordance with paragraph 3, at the time of the notice, the infringement shall be deemed a serious infringement for the purpose of Article 35(1) and, where the flag Member State does not require the fishing vessel to proceed immediately to port in accordance with Article 35(3), it shall assign an observer to the fishing vessel without delay.

5. Each Member State shall:

- (a) each year, before the vessels flying its flag start fishing in the Regulatory Area, send to the Commission an updated list of observers (name and ID if applicable) that it intends to deploy on vessels flying its flag operating in the Regulatory Area;
- (b) require vessels flying its flag to carry an observer from the list referred to in point (a), in accordance with the observer programme;
- (c) to the extent practicable, ensure that individual observers are not deployed on consecutive trips on the same vessel;
- (d) ensure that observers are equipped with an independent two-way communication device at sea;
- (e) take appropriate action with respect to vessels flying its flag to ensure safe working conditions, the protection, security and welfare of observers in the performance of their duties, consistent with international standards or guidelines;
- (f) ensure that the observers treat all data and information relating to the fishing operations collected during their deployment, including images and videos taken, in accordance with applicable confidentiality requirements.

6. Upon the receipt of an observer report from an observer reporting discrepancies with the CEM or an incident, including any instances of obstruction, intimidation, interference, or otherwise prevention of the observer from performing his or her duties, concerning a vessel flying its flag, a Member State shall:

- (a) treat the report with utmost sensitivity and discretion, in accordance with applicable confidentiality requirements;
- (b) assess discrepancies identified in the observer report and conduct any follow-up action deemed appropriate;
- (c) create a report on follow-up actions and submit it to the Commission.

7. Each Member State shall provide to the Commission:

- (a) not later than 24 hours in advance of an observer's deployment on board a fishing vessel, the name of the fishing vessel and international radio call sign, together with the name and ID (if applicable) of the observer concerned;
- (b) electronically and without delay following its receipt, the daily observer report referred to in point (e) of paragraph 11;
- (c) within 20 days following the arrival of the vessel in port, the observer trip report referred to in paragraph 11;
- (d) by 15 February each year for the previous calendar year, a report on its compliance with the obligations set out in this Article.

8. If a fishing vessel is carrying an observer from another Member State or NAFO Contracting Party, that observer shall report to the vessel's flag Member State.

9. If a fishing vessel required to carry an observer is not carrying one, the flag Member State may allow any other Contracting Party to deploy an observer on the vessel.

10. If, during deployment, it is determined that a serious risk to the observer exists, the flag Member State shall take steps to ensure that the observer is removed from the vessel unless and until the risk is addressed.

11. An observer deployed on a vessel shall, at a minimum, perform the duties listed below:

- (a) record for each haul/set, in the format indicated in Annex II.M to the CEM referred to in point 35 of the Annex of this Regulation ('the observer trip report'):
 - (i) the quantity of all catch, by species, including for discards and VME indicator species as referred to in Part VI of Annex I.E to the CEM referred to in point 3 of the Annex to this Regulation:
 - as recorded in the vessel fishing and production logbooks,
 - as estimated independently by the observer.

For hauls where independent observer estimations are not possible, the relevant data cells should be left blank and noted in the comments section;

- (ii) any discrepancy identified between the different sources of catch data;
 - (iii) gear type, mesh size, attachments;
 - (iv) effort data;
 - (v) longitude and latitude, fishing depth;
 - (vi) in the case of trawl fisheries, the time from the end of setting to the start of gear retrieval. In any other case, the start of setting and the end of retrieval;
- (b) monitor the vessel's stowage plan referred to in Article 25, and record in the observer report any discrepancies identified;
 - (c) record any observed interruption of or interference with the VMS;
 - (d) only set vessel's instruments with the master of the vessel's agreement;
 - (e) transmit daily, whether the vessel is fishing or not, before 12:00 UTC to the FMC of the flag Member State, in accordance with Annex II.G to the CEM referred to in point 36 of the Annex to this Regulation, the observer report, by Division;
 - (f) perform such work, including for scientific purposes, as NAFO may request;
 - (g) submit the observer report, in a computer readable form, where possible with the associated images taken by the observer as attachment:
 - (i) as soon as possible after leaving the Regulatory Area and at the latest at arrival of the vessel in port, to the flag Member State;
 - (ii) immediately upon arrival in port, to the local port inspection authority if an inspection in port occurs;
 - (h) make themselves available to inspectors at sea, or in port upon arrival of the vessel, for the purposes of investigating the fishing activities of the vessel;
 - (i) referring to any incidents of non-compliance with this Regulation:
 - (i) report without delay to the competent authority of the flag Member State of the vessel, any discrepancy with this Regulation, including any instances of obstruction, intimidation, interference or otherwise prevention of the observer from performing his or her duties, using the independent two-way communication device; and
 - (ii) maintain detailed records, including relevant images and video footage, of any circumstances and information relating to any instances of discrepancies with this Regulation, for transmission to the FMC of the flag Member State at the earliest opportunity, and at the latest upon arrival of the vessel in port.

12. The master of the vessel flying the flag of a Member State shall:

- (a) extend such cooperation and assistance as may be required to enable the observer to carry out his or her duties. This cooperation shall include providing the observer with such access as may be required to the catch, including such catch as the vessel may intend to discard;
- (b) provide food and accommodation to the observer of a standard no less than that provided to the vessel's officers. If officers' accommodation is not available, the observer shall be provided accommodation of a standard as close to an officer's as practicable but not less than that provided to the crew;
- (c) provide access to all operational areas of the vessel necessary for the observer to complete his or her duties, including the vessel's hold(s), production area(s), bridge, garbage processing equipment and navigation and communication equipment;
- (d) not obstruct, intimidate, interfere with, influence, bribe or attempt to bribe an observer in the performance of his or her duties;
- (e) include the observer in all emergency drills conducted on-board; and
- (f) notify the observer when an inspection party has signalled their intent to board the vessel.

13. Unless otherwise arranged with another NAFO Contracting Party or flag Member State, each Member State shall bear the costs of remunerating the observers it has deployed. The flag Member State may allow fishing operators to contribute to the costs of remunerating observers without prejudice to paragraph 14.

14. Observers shall not have financial or beneficial interest in, and shall be paid in a manner that demonstrates financial independence from, any vessel fishing in the Regulatory Area.

15. The information that Member States are required to provide in accordance with points (c) and (d) of paragraph 3, point (a) of paragraph 5, point (c) of paragraph 6 and paragraph 7 shall be transmitted to the Commission or a body designated by it, which shall ensure that this information is transmitted to the NAFO Executive Secretary without delay, for posting on the NAFO MCS website.

CHAPTER VII

JOINT INSPECTION AND SURVEILLANCE SCHEME

Article 28

General provisions

1. EFCA shall coordinate the inspection and surveillance activities for the Union. It may draw up, in concert with the Member States concerned, joint operational inspection and surveillance programmes for that purpose ('the Scheme'). The Member States whose vessels are engaged in fisheries in the Regulatory Area shall adopt the necessary measures to facilitate the implementation of the Scheme, particularly as regards the human and material resources required and the periods and zones in which these resources are to be deployed.

2. Inspection and surveillance shall be carried out by inspectors assigned by the Member States and notified to EFCA through the Scheme.

3. The Member States, in collaboration with the Commission and EFCA, may by mutual agreement deploy inspectors and EFCA coordinators that EFCA has assigned to the Scheme to an inspection platform of another NAFO Contracting Party.

4. When there are more than 15 fishing vessels of Member States at any one time present in the Regulatory Area, EFCA and Member States shall ensure that during that time:

- (a) an inspector or other competent authority is present in the Regulatory Area; or
- (b) a competent authority is present in the territory of a NAFO Contracting Party adjacent to the Convention Area;
- (c) Member States respond without delay to every notice of infringement in the Regulatory Area by a fishing vessel flying their flag.

5. Member States participating in the Scheme shall provide each inspection platform, upon its entry into the Regulatory Area, with a list of sightings and boardings it has conducted in the previous ten-day period including the date, coordinates and any other relevant information.

6. Each Member State participating in the Scheme, in coordination with the Commission or EFCA, shall ensure that every inspection platform flying its flag operating in the Regulatory Area maintains secure contact, daily where possible, with every other inspection platform operating in the Regulatory Area, to exchange information necessary to coordinate their activities.

7. Inspectors visiting a research vessel shall note the status of the vessel, and shall limit inspection procedures to those necessary to ascertain that the vessel is conducting activities consistent with its research plan. Where the inspectors have reasonable grounds to suspect the vessel is conducting activities that are not consistent with its research plan, the Commission and EFCA shall be informed immediately.

8. Member States shall ensure its inspectors treat vessels operating in the Regulatory Area equitably and in an equal manner by avoiding a disproportionate number of inspections on vessels flying the flag of any one NAFO Contracting Party. In respect of any quarter-annual period, the number of inspections its inspectors conduct on vessels flying the flag of another NAFO Contracting Party shall, insofar as possible, reflect the proportion of the total fishing activity in the Regulatory Area encompassing, inter alia, the level of catches and vessel days. In determining the frequency of inspections, inspectors may take into account the fishing patterns and compliance record of any fishing vessel.

9. When participating in the Scheme, a Member State shall ensure that, except when inspecting a fishing vessel flying its flag and in accordance with its domestic law, inspectors and inspector trainees assigned to the Scheme:

- (a) remain under its operational control;
- (b) implement the provisions of the Scheme;
- (c) do not carry arms when boarding the vessel;
- (d) refrain from enforcing laws and regulations relating to Union waters;
- (e) observe generally accepted international regulations, procedures and practices relating to the safety of the vessel being inspected and its crew;
- (f) do not interfere with fishing activities or stowage of fishery products and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board; and
- (g) open containers in a manner that facilitates their prompt resealing, repacking and eventual re-storage.

10. All inspection, surveillance and investigation reports referred to in this Chapter and associated images or evidence shall be treated as confidential, in accordance with Annex II.B to the CEM referred to in point 37 of the Annex to this Regulation.

Article 29

Notification requirements

1. Each Member State shall, not later than 1 November each year, send the following information to EFCA (with the Commission in copy), which shall post the information on the NAFO MCS website:

- (a) the contact information of the competent authority which shall act as the contact point for the purpose of immediate notification of infringements in the Regulatory Area, and any subsequent changes to this information, not less than 15 days before the change comes into effect;
- (b) the names of inspectors and inspector trainees and the name, radio call sign and communication contact information of each inspection platform it has assigned to the Scheme. It shall notify changes to the particulars so notified, whenever possible, not less than 60 days in advance.

2. When participating in the Scheme, a Member State shall ensure that EFCA is notified in advance of the date, start time and end of each patrol by the inspection platform it has so assigned.

Article 30

Surveillance procedures

1. Where an inspector observes in the Regulatory Area a fishing vessel flying the flag of a NAFO Contracting Party for which there are reasons to suspect an apparent infringement of this Regulation, and where an immediate inspection is not practicable, the inspector shall:

- (a) fill out the Surveillance Report Form in accordance with Annex IV.A to the CEM referred to in point 38 of the Annex to this Regulation. If the inspector has made a volumetric or catch composition evaluation of the content of a haul, the surveillance report shall include all relevant information regarding the composition of the tow, and refer the method used for the volumetric evaluation;
- (b) record images of the vessel and record the position, date and time the image was recorded; and
- (c) without delay electronically transmit the surveillance report and images to his competent authority.

2. The competent authority of a Member State in receipt of such surveillance report shall without delay:

- (a) transmit the surveillance report to EFCA which shall post it on the NAFO MCS website for transmission to the flag State Contracting Party of the vessel;

- (b) transmit a copy of images recorded to EFCA which shall in turn transmit them to the flag State Contracting Party of the vessel or the flag Member State if different from the inspecting Member State;
 - (c) ensure security and continuity of the evidence for subsequent inspections.
3. Each Member State's competent authority shall on receipt of a surveillance report concerning a vessel flying its flag, conduct such investigation as may be necessary to determine appropriate follow-up action.
4. Each Member State shall send the investigation report to EFCA, which shall post it on the NAFO MCS website and send it to the Commission.

Article 31

Boarding and inspection procedures for Contracting Parties

Each Member State shall ensure that for an inspection conducted under the Scheme, its inspectors:

- (a) prior to boarding, notify the fishing vessel by radio, using the International Code of Signals, of the name of the inspection platform;
- (b) display, on the inspection vessel and boarding vessel, the pennant depicted in Annex IV.E to the CEM referred to in point 39 of the Annex to this Regulation;
- (c) ensure that during boarding, the inspection vessel remains at a safe distance from fishing vessels;
- (d) do not require the fishing vessel to stop or manoeuvre when towing, shooting or hauling;
- (e) limit each inspection team to a maximum of four inspectors including any inspection trainee who may accompany the inspection team for training purposes only. Where an inspection trainee accompanies the inspectors, inspectors shall, upon boarding, identify the trainee to the master of the vessel. The inspection trainee shall simply observe the inspection operation conducted by the authorised inspectors and shall in no way interfere with the activities of the fishing vessel;
- (f) upon boarding, present to the master of the vessel their NAFO documents of identity issued by the NAFO Executive Secretary in accordance with Article 32.3(b) of the CEM;
- (g) limit inspections to four hours, or the time required for the net to be hauled in and both the net and the catch to be inspected, whichever is longer, except:
 - (i) in the case of an infringement; or
 - (ii) where the inspector estimates the quantity of catch on board to be different from the quantity of catch recorded in the fishing logbook, in which case the inspector will limit the inspection to one additional hour with a view to verifying calculations and procedures, and re-examining the relevant documentation used to calculate the catch taken in the Regulatory Area and the catch on board the vessel;
- (h) gather any relevant information used for identifying compliance with this Regulation provided by the observer.

Article 32

Obligations of the master of the vessel during inspection

Every master of the vessel shall take the necessary measures as may be required to facilitate inspection by:

- (a) ensuring, where an inspection vessel has signalled that an inspection is about to commence, that any net about to be hauled is not taken on board for at least 30 minutes following the signal from the inspection vessel;
- (b) upon request by an inspection platform and to the extent compatible with good seamanship, facilitating boarding by the inspectors;
- (c) providing a boarding ladder in accordance with Annex IV.G to the CEM referred to in point 40 of the Annex to this Regulation;

- (d) ensuring any mechanical pilot hoist is fit for use in a safe manner including safe access between the hoist to the deck;
- (e) providing the inspectors access to all relevant areas, decks and rooms, processed and unprocessed catch, nets or other gear, equipment, and any relevant documents which they consider necessary to verify compliance with this Regulation;
- (f) recording and providing to inspectors upon request, coordinates pertaining to the start and end locations of any trial tow conducted in accordance with point (iii) of point (b) of Article 8(1);
- (g) upon request of the inspector, producing registration documents, drawings or descriptions of fish rooms, production logbooks and stowage plans and rendering such assistance as the inspector reasonably requires to ascertain that actual stowage of catch conforms with the stowage plan;
- (h) refraining from interfering with any contact between the inspectors and the observer including respecting the privacy necessary for the inspectors and the observer to perform their duties;
- (i) facilitating the taking of samples of processed fish by inspectors, for the purpose of species identification through DNA analysis;
- (j) taking such action as may be necessary to preserve the integrity of any seal affixed by the inspectors and of any evidence remaining on board, until otherwise directed by the flag State;
- (k) to secure the continuity of evidence, where seals have been affixed and/or evidence has been secured, signing the appropriate section of the inspection report acknowledging the placement of seals;
- (l) ceasing fishing when requested to do so by the inspectors in accordance with point (b) of Article 35(2);
- (m) providing, upon request, the use of the vessel's communication equipment and operator for messages to be sent out and received by the inspectors;
- (n) at the request of the inspectors, removing any part of the fishing gear which appears to be unauthorised under this Regulation;
- (o) where the inspectors have made any entries in the logbooks, providing the inspector with a copy of each page where such entry appears, and at the request of the inspectors, signing each page to confirm that it is a true copy; and
- (p) when requested to cease fishing, not resuming fishing until:
 - (i) the inspectors have completed the inspection and secured any evidence; and
 - (ii) the master of the vessel has signed the appropriate section of the inspection report as referred to in point (k).

Article 33

Inspection report and follow-up

1. Each Member State shall ensure that its inspectors complete an inspection report in the form set out in Annex IV.B to the CEM referred to in point 41 of the Annex to this Regulation ('the inspection report') in relation to each inspection.
2. For the purpose of the inspection report:
 - (a) a fishing trip shall be considered to be current where the inspected vessel has on board catch harvested in the Regulatory Area during the trip;
 - (b) when comparing entries in the production logbook with entries in the fishing logbook the inspectors shall convert production weight into live weight guided by conversion factors set out in Annexes XIII, XIV and XV to Commission Implementing Regulation (EU) No 404/2011 ⁽¹⁶⁾ for Union fishing vessels in respect of species and presentations covered by those Annexes and the conversion factors used by the master of the vessel in other cases;
 - (c) the inspectors shall:
 - (i) summarise from logbook records the vessel's catch in the Regulatory Area by species and by Division for the current fishing trip;

⁽¹⁶⁾ Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 112, 30.4.2011, p. 1).

- (ii) record summaries in section 12 of the inspection report, as well as differences between the recorded catch and their estimates of the catch on board in section 14.1 of the inspection report;
 - (iii) upon completion of the inspection, sign the inspection report and present the inspection report to the master of the vessel for signature and comment, and to any witness who may wish to submit a statement;
 - (iv) immediately notify their competent authority and transmit to it the information and images within 24 hours, or at the earliest opportunity; and
 - (v) provide a copy of the report to the master of the vessel, duly noting in the appropriate section of the inspection report any refusal by the master of the vessel to acknowledge receipt.
3. The inspecting Member State shall:
- (a) send to EFCA the at sea inspection report, if possible within 20 days of the inspection for posting on the NAFO MCS website;
 - (b) comply with the procedure referred to in Article 34(2), after the inspectors issue a notice of an infringement.
4. Each Member State shall ensure that inspection and surveillance reports prepared by NAFO inspectors have equivalent evidentiary status for establishing facts to inspection and surveillance reports of its own inspectors.
5. Member States shall cooperate to facilitate judicial or other proceedings initiated as follow-up to a report submitted by a NAFO inspector in accordance with the Scheme.

Article 34

Procedures relating to infringements

1. Each inspecting Member State shall ensure that its inspectors upon detecting an infringement of this Regulation:
- (a) record the infringement in the inspection report;
 - (b) enter and sign a notation in the fishing logbook or other relevant document of the inspected vessel indicating the date, geographical coordinates, and nature of the infringement, make a copy of any relevant entry and request that the master of the vessel sign each page to verify that it is a true copy of the original;
 - (c) record images of any gear, catch, or other evidence the inspector deems necessary relating to the infringement;
 - (d) affix securely the inspection seal depicted in NAFO Inspection Seal provided in Annex IV.F to the CEM referred to in point 42 of the Annex to this Regulation, as appropriate, and duly note the action taken and the serial number of each seal in the inspection report;
 - (e) request the master of the vessel:
 - (i) in order to secure the continuity of evidence, to sign the appropriate section of the inspection report acknowledging the placement of seals; and
 - (ii) to give a written statement in the appropriate section of the inspection report;
 - (f) request that the master of the vessel remove any part of the fishing gear which appears to be unauthorised under this Regulation; and
 - (g) where practicable, notify the observer of the infringement.
2. The inspecting Member State shall:
- (a) within 24 hours from detection of the infringement, transmit to the Commission and EFCA, which shall in turn transmit to the competent authority of the flag State Contracting Party or Member State if different from the inspecting Member State, and the NAFO Executive Secretary, written notification of the infringement reported by its inspectors. The written notification shall include the information entered in point 15 of the inspection report in Annex IV.B to the CEM referred to in point 41 of the Annex to this Regulation, cite the relevant measures and describe in detail the basis for issuing the notice of infringement, and the evidence in support of the notice, and where possible, be accompanied by images of any gear, catch or other evidence relating to the infringement referred to in paragraph 1 of this Article;

- (b) within five days of the inspection vessel's return to port, transmit the inspection report to the Commission and EFCA;

EFCA shall post the inspection report on the NAFO MCS website in PDF format.

- 3. The follow-up to infringements by the flag Member State shall be conducted in accordance with the provisions of Article 36.

Article 35

Additional procedures for serious infringements

- 1. Each of the following violations constitutes a serious infringement, within the meaning of Article 90 of Regulation (EC) No 1224/2009:

- (a) fishing an 'Others' quota without prior notification to the Commission in contravention of Article 5;
- (b) fishing an 'Others' quota more than five working days following closure of the fishery in contravention of Article 5;
- (c) directed fishing for a stock which is subject to a moratorium, or for which fishing is otherwise prohibited, in contravention of Article 6;
- (d) directed fishing for stocks or species after the date of closure of the fishery by the flag Member State notified to the Commission, in contravention of Article 6;
- (e) fishing in a closed area, in contravention of Article 9(5) and Article 11;
- (f) fishing with a bottom fishing gear in an area closed to bottom fishing activities, in contravention of Chapter III;
- (g) using an unauthorised mesh size in contravention of Article 13;
- (h) fishing without a valid authorisation;
- (i) mis-recording of catches in contravention of Article 25;
- (j) failing to carry or interfering with the operation of the satellite monitoring system in contravention of Article 26;
- (k) failure to communicate messages relating to catch in contravention of Article 10(3) or Article 25;
- (l) obstructing, intimidating, interfering with or otherwise preventing inspectors or observers from performing their duties, or exerting any other form of indirect pressure;
- (m) committing an infringement where there is no observer on board;
- (n) concealing, tampering with or disposing of evidence relating to an investigation, including the breaking or tampering of seals or gaining access to sealed areas;
- (o) presentation of falsified documents or providing false information to an inspector that would prevent a serious infringement from being detected;
- (p) landing, transshipment or making use of other port services:
 - (i) in a port not designated in accordance with the provisions of Article 39(1); or
 - (ii) without authorisation of the port State referred to in Article 39(6);
- (q) failure to comply with the provisions of Article 41(1);
- (r) failure to carry an observer, if this is required.

- 2. Where citing a vessel for having committed a serious infringement, the inspector shall:

- (a) take all measures necessary to ensure security and continuity of evidence, including, as appropriate, sealing the vessel's hold and/or fishing gear for further inspection;
- (b) request that the master of the vessel cease all fishing activity that appears to constitute a serious infringement; and

- (c) immediately notify the inspector's competent authority, and transmit to it the information, and where possible images, within 24 hours. The competent authority receiving this information shall notify the flag State Contracting Party or Member State if different from the inspecting Member State in accordance with Article 34.
- 3. In the case of a serious infringement concerning a vessel flying its flag, the flag Member States shall:
 - (a) acknowledge receipt of the related information and images without delay;
 - (b) ensure the inspected vessel does not resume fishing until further notification;
 - (c) using all information and material available, review the case and, within 72 hours require the vessel to proceed immediately to a port for a full inspection under its authority, if any of the following serious infringements are apparent:
 - (i) directed fishing for a stock which is subject to a moratorium;
 - (ii) directed fishing for a stock for which fishing is prohibited under Article 6;
 - (iii) mis-recording of catch, in contravention of Article 25; or
 - (iv) repetition of the same serious infringement during a 6-month period.
- 4. Where the serious infringement is misrecording of catch, the full inspection shall ensure the physical inspection and enumeration of total catch on board, by species and Division.
- 5. For the purposes of this Article, 'misrecording of catches' means a difference of at least 10 tonnes or 20 %, whichever is greater, between the inspectors' estimates of processed catch on board, by species or in total, and the figures recorded in the production logbook, calculated as a percentage of the production logbook figures.
- 6. Subject to the consent of the flag Member State and, if the port State NAFO Contracting Party is not the same as the inspector's Member State, inspectors of that NAFO port Contracting Party or port Member State may participate in the full inspection and enumeration of the catch.
- 7. If point (c) of paragraph 3 does not apply, the flag Member State shall either:
 - (a) allow the vessel to resume fishing. In such a case, the flag Member State shall not later than two days following the notice of infringement provide written justification to the Commission on why the vessel has not been ordered to port. The commission shall transmit that justification to the NAFO Executive Secretary; or
 - (b) require the vessel to proceed immediately to a port for a full physical inspection, under its authority.
- 8. Where the flag Member State orders the inspected vessel to port, the inspectors may board or remain on board the vessel as it proceeds to port, provided that the flag Member State does not require the inspectors to leave the vessel.

Article 36

Follow-up to infringements

- 1. In the case of an infringement by a vessel flying its flag, the Member State shall:
 - (a) investigate fully, including, if necessary, by physically inspecting the fishing vessel at the earliest opportunity;
 - (b) cooperate with the inspecting NAFO Contracting Party or inspecting Member State if different from the flag Member State to preserve the evidence and the chain of custody in a form that will facilitate proceedings in accordance with its laws;
 - (c) take immediate judicial or administrative action in conformity with its national legislation against the persons responsible for the vessel; and
 - (d) ensure that sanctions applicable in respect of infringements are adequate in severity to be effective in securing compliance, deterring further infringements or their repetition and depriving the offenders of the benefits accruing from the infringement.
- 2. The judicial or administrative action and sanctions referred to in points (c) and (d) of paragraph 1 may include, but shall not be limited to, the following, depending on the gravity of the offence and in accordance with domestic law:
 - (a) fines;
 - (b) seizure of the vessel, illegal fishing gear and catches;

- (c) suspension or withdrawal of authorisation to conduct fishing activities; and
 - (d) reduction or cancellation of any fishing allocations.
3. Each flag Member State shall ensure that it treats all notices of infringement as if the infringement was reported by its own inspectors.
4. The flag Member State and the port Member State shall immediately notify the Commission:
- (a) the judicial or administrative action and sanctions referred to in points (c) and (d) of paragraph 1;
 - (b) as soon as practicable but no later than four months following the occurrence of a serious infringement, a report setting out the progress of the investigation, including details of any action it has taken or has initiated in relation to the infringement; and
 - (c) upon completion of its investigation, a report on the final outcome.

Article 37

Member State reports on inspection, surveillance and infringements

1. Each Member State shall by 1 February each year report to the Commission and to EFCA, in accordance with the Scheme, the following information:
- (a) the number of inspections of fishing vessels flying its flag and fishing vessels flying the flag of another NAFO Contracting Party it carried out in the previous calendar year;
 - (b) the name of every fishing vessel in relation to which its inspectors have issued a notice of infringement, including the date and position of the inspection and the nature of the infringement;
 - (c) the number of hours flown by its surveillance aircraft on patrol, the number of sightings made by such aircraft, the number of surveillance reports it has transmitted and, for each such report, the date, time and position of the sightings;
 - (d) the action it has taken during the previous year, including a description of the specific terms of any judicial or administrative actions or sanctions imposed (for example the amount of fines, value of forfeited fish and/or gear, written warnings given), concerning:
 - (i) every infringement cited by an inspector relating to vessels flying its flag; and
 - (ii) each surveillance report it has received.

By 1 March each year, the Commission shall transmit the information referred to in the first subparagraph to the NAFO Executive Secretary.

2. The reports referred to in point (d) of the first subparagraph of paragraph 1 shall indicate the current status of the case. The Member State shall continue to list such infringement in each subsequent report until it reports the final outcome of the infringement.
3. A Member State shall provide a sufficiently detailed explanation regarding every infringement for which it has taken no action or where no penalties were imposed.

CHAPTER VIII

PORT STATE CONTROL OF VESSELS FLYING THE FLAG OF ANOTHER CONTRACTING PARTY

Article 38

Scope

This Chapter applies to landing, transshipments, or use of ports of Member States by fishing vessels flying the flag of another NAFO Contracting Party, conducting fishing activities in the Regulatory Area. This Chapter applies to vessels carrying catches in the Regulatory Area, or fishery products originating from such catches, that have not been previously landed or transhipped at a port.

*Article 39***Duties of the port Member State**

1. The port Member State shall provide the Commission and EFCA with a list of designated ports to which fishing vessels may be permitted entry for the purpose of landing, transshipment and/or provision of port services, and shall to the greatest extent possible ensure that each designated port has sufficient capacity to conduct inspections pursuant to this Chapter. The Commission shall post the list of designated ports on the NAFO MCS website, in PDF format. Any subsequent changes to the list shall be posted in replacement of the previous one no less than 15 days before the change comes into effect.
2. The port Member State shall establish a minimum prior request period. The prior request period shall be three working days before the estimated time of arrival. However, in agreement with the Commission, the port Member State may make provisions for another prior request period, taking into account, inter alia, the catch product type or the distance between fishing grounds and its ports. The port Member State shall provide the information on the prior request period to the Commission, which shall post it on the NAFO MCS website, in PDF format.
3. The port Member State shall designate the competent authority which shall act as the contact point for the purposes of receiving requests in accordance with Article 41, receiving confirmations in accordance with Article 40(2) and issuing authorisations in accordance with paragraph 6 of this Article. The port Member State shall provide the name of the competent authority and its contact information to the Commission, which shall post this information on the NAFO MCS website, in PDF format.
4. The requirements set out in paragraphs 1, 2 and 3 do not apply where the Union does not permit landings, transshipments, or use of ports by vessels flying the flag of another NAFO Contracting Party.
5. The port Member State shall forward a copy of the form referred to in Article 41(1) and (2) without delay to the flag NAFO Contracting Party of the vessel and to the flag NAFO Contracting Party of donor vessels where the vessel has engaged in transshipment operations.
6. Fishing vessels may not enter port without prior authorisation by the competent authorities of the port Member State. Authorisation to land or tranship or make use of other port services shall only be given if the confirmation from the flag NAFO Contracting Party as referred to in Article 40(2) has been received.
7. By way of derogation from paragraph 6, the port Member State may authorise all or part of a landing in the absence of the confirmation referred to in that paragraph subject to the following conditions:
 - (a) the fish concerned shall be kept in storage under the control of the competent authorities;
 - (b) the fish shall only be released to be sold, taken over, produced, or transported once the confirmation referred to in paragraph 6 has been received;
 - (c) if the confirmation has not been received within 14 days of completion of the landing operations, the port Member State may confiscate and dispose of the fish in accordance with national rules.
8. The port Member State shall without delay notify the master of the vessel of its decision on whether to authorise or deny the port entry or, if the vessel is in port, the landing, transshipment and other use of port. If the vessel entry is authorised the port Member State shall return to the master of the vessel a copy of the form Port State Control Prior Request Form in Annex I.LL to the CEM referred to in point 43 of the Annex to this Regulation with Part C duly completed. This copy shall also be sent to the Commission, which shall post it on the NAFO MCS website without delay. In the case of a denial the port Member State shall also notify the flag NAFO Contracting Party.
9. In case of cancellation of the prior request referred to in Article 41(2) the port Member State shall send a copy of the cancelled Port State Control Prior Request Form to the Commission, which shall post it on the NAFO MCS website, for automatic transmission to the flag NAFO Contracting Party.
10. Unless otherwise required in a recovery plan, the port Member State shall carry out inspections of at least 15 % of all such landings or transshipments during each reporting year. In determining which vessels to inspect, the port Member State shall give priority to:
 - (a) vessels that have been previously denied entry or use of a port in accordance with this Chapter or any other provision of this Regulation; and
 - (b) requests from other NAFO Contracting Parties, States or Regional Fisheries Management Organisations ('RFMOs') that a particular vessel be inspected.

11. Inspections shall be consistent with Annex IV.H to the CEM referred to in point 44 of the Annex to this Regulation, and carried out by authorised port Member State inspectors who shall present documents of identity to the master of the vessel prior to the inspection.

12. Subject to the agreement of the port Member State, the Commission may invite inspectors of other NAFO Contracting Parties to accompany their own inspectors and observe the inspection.

13. An inspection in port shall involve the monitoring of the entire landing or transshipment of fishery resources in that port. During any such inspection, the inspector of the port Member State shall, at a minimum:

- (a) cross-check against the quantities of each species landed or transhipped:
 - (i) the quantities by species recorded in the logbook;
 - (ii) catch and activity reports; and
 - (iii) all information on catches provided in the prior notification Port State Control Prior Request Forms as set out in Annex II.L to the CEM referred to in point 43 of the Annex to this Regulation;
- (b) verify and record the quantities by species of catch remaining on board upon completion of landing or transshipment;
- (c) verify any information from inspections carried out in accordance with Chapter VII;
- (d) verify all nets on board and record mesh size measurements;
- (e) verify fish size for compliance with minimum size requirements;
- (f) where relevant, verify species for compliance with accuracy of catch declaration.

14. The port Member State shall, where possible, communicate with the master of the vessel or senior crew members of the vessel, as well as with the observer, and where possible and where needed, ensure that the inspector is accompanied by an interpreter.

15. The port Member State shall, where possible, avoid unduly delaying the fishing vessel and ensure that the vessel suffers the minimum interference and inconvenience, including avoiding unnecessary degradation of the quality of the fish.

16. Each inspection shall be documented by completing the form PSC 3 (port State control inspection form) as set out in Annex IV.C to the CEM referred to in point 9 of the Annex to this Regulation. The process for completion and handling of the report on port State control inspection shall include the following:

- (a) the inspectors shall identify and provide details of any infringement of this Regulation detected during the port inspection. Details shall include all relevant information available with regard to infringements detected at sea during the current trip of the inspected fishing vessel;
- (b) the inspectors may insert any comments they consider relevant;
- (c) the master of the vessel shall be given the opportunity to add any comments or objection to the report, and, as appropriate, to contact the relevant authorities of the flag State in particular where the master of the vessel has serious difficulties in understanding the content of the report;
- (d) the inspectors shall sign the report and request that the master of the vessel sign the report. The master of the vessel's signature on the report shall serve only as acknowledgment of the receipt of a copy of the report;
- (e) the master of the vessel shall be provided with a copy of the report containing the result of the inspection, including possible measures that could be taken.

17. The port Member State shall without delay send a copy of each port State control inspection report to the Commission and to EFCA. The Commission shall post the port State control inspection report on the NAFO MCS website, in PDF format, for automatic transmission to the flag State NAFO Contracting Party and to the flag State of any vessel that transhipped catch to the inspected fishing vessel.

Article 40

Duties of the flag Member State

1. The Member States shall ensure that the master of a vessel flying their flag complies with the obligations relating to masters of the vessel set out in Article 41.

2. The Member State of a fishing vessel intending to land or tranship or make use of other port services, or where the vessel has engaged in transshipment operations outside a port, shall confirm by returning a copy of the Port State Control Prior Request Form set out in Annex ILL to the CEM referred to in point 43 of the Annex to this Regulation, transmitted in accordance with Article 39(5) with part B duly completed, stating that:

- (a) the fishing vessel declared to have caught the fish had sufficient quota for the species declared;
- (b) the declared quantity of fish on board has been duly reported by species and taken into account for the calculation of any catch or effort limitations that may be applicable;
- (c) the fishing vessel declared to have caught the fish had authorisation to fish in the areas declared; and
- (d) the presence of the vessel in the area in which it has declared to have taken its catch has been verified by VMS data.

3. The Member State shall send to the Commission the contact information of the competent authority, which shall act as the contact point for the purposes of receiving requests in accordance with Article 39(5) and providing confirmation in accordance with Article 39(6). The Commission shall post this information on the NAFO MCS website in PDF format.

Article 41

Obligations of the master of the vessel

1. The master or the agent of a fishing vessel intending to enter port shall forward the request for entry to the competent authorities of the port Member State within the request period referred to in Article 39(2). Such request shall be accompanied by the Port State Control Prior Request Form set out in Annex ILL to the CEM referred to in point 43 of the Annex to this Regulation duly completed as follows:

- (a) Port State Control Prior Request Form PSC 1, as referred to in Annex ILL.A to the CEM shall be used where the vessel is carrying, landing or transshipping its own catch; and
- (b) Port State Control Prior Request Form PSC 2, as referred to in Annex ILL.B to the CEM, shall be used where the vessel has engaged in transshipment operations. A separate form shall be used for each donor vessel;
- (c) both forms PSC 1 and PSC 2 shall be completed in cases where a vessel carries, lands or tranships its own catch and catch that was received through transshipment.

2. A master of the vessel or agent may cancel a prior request by notifying the competent authorities of the port they intended to use. The request shall be accompanied by a copy of the original Port State Control Prior Request Form set out in Annex ILL to the CEM referred to in point 43 of the Annex to this Regulation, with the word 'cancelled' written across it.

3. The master of the vessel shall not commence landing or transshipment operations, or make use of other port services, before authorisation has been given by the competent authority of a Member State or prior to the estimated time of arrival (ETA) as reported in PSC1 or PSC2 has expired. However, landing or transshipment operations and making use of other port services may commence prior to ETA with permission from the competent authorities of the port Member State.

4. The master of the vessel shall:

- (a) cooperate with and assist in the inspection of the fishing vessel conducted in accordance with these procedures and shall not obstruct, intimidate or interfere with the port State inspectors in the performance of their duties;
- (b) provide access to any areas, decks, rooms, catch, nets or other gear or equipment, and provide any relevant information which the port State inspectors request, including copies of any relevant documents.

Article 42

Infringements detected during inspections in port

Where an infringement is detected during an inspection of a vessel in port, the relevant provisions of Articles 34 to 37 shall apply.

*Article 43***Confidentiality**

All inspection and investigation reports and associated images or evidence, and forms referred to in this Chapter shall be treated by Member States, competent authorities, operators, masters of the vessel and crew as confidential, in accordance with the rules on confidentiality set out in Annex II.B to the CEM referred to in point 37 of the Annex to this Regulation.

CHAPTER IX

NON-CONTRACTING PARTY*Article 44***Presumption of IUU fishing**

A non-Contracting Party vessel shall be presumed to have undermined the effectiveness of this Regulation, and to have engaged in IUU fishing, if it has been:

- (a) sighted or identified by other means as engaged in fishing activities in the Regulatory Area;
- (b) involved in transshipment with another non-Contracting Party vessel sighted or identified as engaged in fishing activities inside or outside the Regulatory Area; and/or
- (c) included in the IUU list of the North East Atlantic Fisheries Commission ('NEAFC') ⁽¹⁷⁾.

*Article 45***Sighting and inspection of non-Contracting Party vessels in the Regulatory Area**

Each Member State with an inspection and/or surveillance presence in the Regulatory Area authorised under the Joint Inspection and Surveillance Scheme that sights or identifies a non-Contracting Party vessel engaged in fishing activities in the Regulatory Area shall:

- (a) transmit immediately the information to the Commission using the format of the surveillance report set out in Annex IV.A to the CEM referred to in point 38 of the Annex to this Regulation;
- (b) attempt to inform the master of the vessel that the vessel is presumed to be engaged in IUU fishing and that this information will be distributed to all Contracting Parties, relevant RFMOs and the flag State of the vessel;
- (c) if appropriate, request permission from the master of the vessel to board the vessel for inspection; and
- (d) where the master of the vessel agrees to inspection:
 - (i) transmit the inspector's findings to the Commission without delay, using the inspection report form set out in Annex IV.B to the CEM referred to in point 41 of the Annex to this Regulation; and
 - (ii) provide a copy of the inspection report to the master of the vessel.

*Article 46***Port entry and inspection of non-Contracting Party vessels**

1. Each master of the vessel of a non-Contracting Party vessel shall request permission to enter port from the competent authority of the port Member State in accordance with the provisions of Article 41.

2. Each port Member State shall:

- (a) forward without delay to the flag State of the vessel and to the Commission the information it has received pursuant to Article 41;

⁽¹⁷⁾ The Convention on future multilateral cooperation in the North-East Atlantic Fisheries signed in London on 18 November 1980 and entered into force on 17 March 1982 to which European Community acceded on 13 July 1981 (OJ L 227, 12.8.1981, p. 22).

- (b) refuse port entry to any non-Contracting Party vessel where:
 - (i) the master of the vessel has not fulfilled the requirements set out in Article 41(1); or
 - (ii) the flag State has not confirmed the vessel's fishing activities in accordance with Article 40(2);
 - (c) inform the master of the vessel or agent, the flag State of that vessel, and the Commission of its decision to refuse port entry, landing, transshipment or other use of port of any non-Contracting Party vessel;
 - (d) withdraw denial of port entry only if the port State has determined there is sufficient proof that the grounds on which entry was denied were inadequate or erroneous or that such grounds no longer apply;
 - (e) inform the master of the vessel or agent, the flag State of that vessel, and the Commission of its decision to withdraw denial of port entry, landing, transshipment or other use of port of any non-Contracting Party vessel;
 - (f) where it permits entry, ensure the vessel is inspected by duly authorised officials knowledgeable in this Regulation and that the inspection is carried out in accordance with Article 39(11) to (17); and
 - (g) send a copy of the inspection report and details of any subsequent action it has taken to the Commission without delay.
3. Each Member State shall ensure that no non-Contracting Party vessel engages in landing, or transshipment operations or other use of its ports unless the vessel has been inspected by its duly authorised officials knowledgeable in this Regulation and the master of the vessel establishes that the fish species on board subject to the Convention were harvested outside the Regulatory Area or in compliance with this Regulation.

Article 47

Provisional IUU vessel list

1. In addition to information submitted from Member States in accordance with Articles 42 and 44, each Member State may, without delay, transmit to the Commission any information that may assist in identification of any non-Contracting Party vessel that might be carrying out IUU fishing in the Regulatory Area.
2. If a Contracting Party objects to a NEAFC IUU-listed vessel being incorporated into or deleted from the NAFO IUU vessel list, such vessel shall be placed by NAFO Executive Secretary on the Provisional IUU vessel list.

Article 48

Action against vessels listed in the IUU vessel list

Each Member State shall take all measures necessary to deter, prevent and eliminate IUU fishing in relation to any vessel listed in the IUU vessel list, including:

- (a) prohibiting any vessel flying its flag from, except in the case of force majeure, participating in fishing activities with such vessel, including but not limited to joint fishing operations;
- (b) prohibiting the supply of provisions, fuel or other services to such vessel;
- (c) prohibiting entry into its ports of such vessel, and if the vessel is in port, prohibiting use of the port, except in the case of force majeure or distress, for the purposes of inspection, or for taking appropriate enforcement action;
- (d) prohibiting change of crew, except as required in relation to force majeure;
- (e) refusing to authorise such vessel to fish in waters under its national jurisdiction;
- (f) prohibiting chartering of such vessel;
- (g) refusing to entitle such vessels to fly its flag;
- (h) prohibiting landing and importation of fish from onboard or traceable to such vessel;
- (i) encouraging importers, transporters and other sectors concerned, to refrain from negotiating transshipment of fish with such vessels; and
- (j) collecting and exchanging any appropriate information regarding such vessel with the other Contracting Parties, non-Contracting Parties and RFMOs with the aim of detecting, deterring and preventing the use of false import or export certificates in relation to fish or fishery product from such vessels.

CHAPTER X

FINAL PROVISIONS

*Article 49***Confidentiality**

In addition to the obligations laid down in Articles 112 and 113 of Regulation (EC) No 1224/2009, Member States shall ensure confidential treatment of electronic reports and messages transmitted to and received from NAFO pursuant to point (a) of Article 4(2), Article 4(6), point (c) of Article 5(3), Article 10(2), Article 15(4), Article 22(1), (5) and (6), Article 23(6), Article 25(8), Article 26(9), Article 27(3), (5), (6), (7) and (15), Article 29(1) and (2), Article 34(2), Article 36(4), Article 37(1) and Article 39(8).

*Article 50***Procedure for amendments**

1. The Commission shall adopt by 18 December 2019 a delegated act in accordance with Article 51 supplementing this Regulation with the provisions of and Annexes to the CEM referred to in the Annex to this Regulation. The Commission is empowered to adopt delegated acts in accordance with Article 51 to subsequently amend that delegated act.
2. The Commission is empowered to adopt delegated acts in accordance with Article 51 amending this Regulation to adapt it to measures adopted by NAFO that bind the Union and its Member States concerning:
 - (a) the list of activities of research vessels referred to in Article 4(1);
 - (b) measures provided for in Article 9 relating to Northern prawn fishing areas; relevant reporting, change of fishery, fishing depths and references to restricted or closed areas;
 - (c) procedures concerning vessels with more than 50 tonnes live weight total catch on board, entering the Regulatory Area to fish for Greenland halibut concerning the content of notifications provided for in points (a) and (b) of Article 10(2), and conditions for commencement of fishing provided for in point (d) of Article 10(2);
 - (d) the content of the electronic transmission set out in Article 22(5), the list of valid documents to be carried on board a vessel in accordance with Article 22(8) and the content of the capacity plan described in Article 22(10);
 - (e) documentation to be carried on board a chartered vessel in accordance with Article 23(9);
 - (f) the VMS data to be transmitted by automatic continuous transmission as set out in Article 26(1), as well as duties concerning FMC as set out in Article 26(2) and (9);
 - (g) percentage rates for observer coverage as set out in Article 27(3), reporting by Member States as set out in Article 27(7), duties of an observer as set out in Article 27(11), and duties of the master of the vessel as set out in Article 27(12);
 - (h) obligations of the master of the vessel during inspection, as set out in Article 32.
3. Amendments in accordance with paragraph 1 shall be strictly limited to the implementation of amendments to CEM in Union law.

*Article 51***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 50 shall be conferred on the Commission for a period of five years from 17 June 2019. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 50 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated act already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 50 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 52

Repeal

Regulation (EC) No 2115/2005 and Regulation (EC) No 1386/2007 are hereby repealed.

Article 53

Amendments to Regulation (EU) 2016/1627

Regulation (EU) 2016/1627 is amended as follows:

- (1) In Article 3, the following points are added:

- ‘(27) “large-scale pelagic longline vessel” means a pelagic longline vessel greater than 24 metres in length overall;
- (28) “purse seines” means any encircling net the bottom of which is drawn together by means of a purse line at the bottom of the net, which passes through a series of rings along the ground rope, enabling the net to be pursed and closed;’.

- (2) Article 9 is replaced by the following:

‘Article 9

Annual fishing capacity management plans

1. Each Member State shall establish an annual fishing capacity management plan to adjust the number of fishing vessels, in order to demonstrate that the fishing capacity is commensurate with the fishing opportunities allocated to the vessels in the relevant time period.

2. Member States shall adjust the fishing capacity using the parameters proposed by the SCRS and adopted by ICCAT in 2009.

Member States may allocate sectoral quotas to small scale coastal vessels authorised to fish for bluefin tuna and shall indicate it in their fishing plans. They shall also include the additional measures to closely monitor the quota consumption of that fleet in their monitoring, control and inspection plans. Member States may authorise a different number of vessels to fully utilise their fishing opportunities, using the parameters referred to in paragraph 1.

3. Portugal and Spain may allocate sectoral quotas for bait-boats operating in the waters around Azores, Madeira and Canary Islands. The sectoral quota and the additional measures to monitor its consumption shall be clearly defined in their respective annual plans.

4. When Member States allocate sectoral quotas in accordance with paragraph 2 or 3, the minimum quota requirement of 5 tonnes defined by SCRS in 2009 shall not apply.

5. The adjustment of fishing capacity for purse seiners shall be limited to a maximum increase of 20 % compared to the baseline fishing capacity of 2018.

6. For the period 2019-2020, Member States may authorise a number of traps engaged in bluefin tuna fishing that allows the full exploitation of their fishing opportunities.’.

(3) Article 10 is replaced by the following:

‘Article 10

Annual farming management plans

1. By 31 January of each year, each Member State with a bluefin tuna quota shall transmit to the Commission an annual farming management plan in accordance with this Article.

2. The Commission shall compile and integrate the plans into the Union plan. The Commission shall transmit that plan to the ICCAT Secretariat by 15 February of each year for discussion and approval by ICCAT.

3. In the annual farming management plan, each Member State shall demonstrate that the total input capacity and the total farming capacity are commensurate with the estimated amount of bluefin tuna available for farming.

4. Member States shall limit their tuna farming capacity to the total farming capacity registered in the ICCAT “record of bluefin tuna farming facilities” or authorised and declared to ICCAT in 2018.

5. The maximum input of wild caught bluefin tuna into the farms of a Member State shall be limited to the level of the input quantities registered with ICCAT in the “record of bluefin tuna farming facilities” by the farms of that Member State in the years 2005, 2006, 2007 or 2008.

6. If a Member State needs to increase the maximum input of wild caught tuna in one or several of its tuna farms, that increase shall be commensurate with the fishing opportunities allocated to that Member State, including live bluefin tuna imports.

7. Farm Member States shall ensure that scientists tasked by the SCRS for trials to identify growth rates during the fattening period have access to and, as required by the protocol, assistance to carry out, trials in accordance with the standardised protocol developed by SCRS for the monitoring of recognisable individual fish.’.

(4) Article 11 is replaced by the following:

‘Article 11

Fishing seasons

1. Purse seine fishing for bluefin tuna shall be permitted in the eastern Atlantic Ocean and Mediterranean Sea from 26 May until 1 July.

2. By way of derogation from paragraph 1, purse seine fishing for bluefin tuna in the Adriatic Sea may be open until 15 July for farmed fish in the Adriatic Sea (FAO fishing area 37.2.1).

3. By way of derogation from paragraph 1, if a Member State can demonstrate that, due to winds reaching force 5 or more on the Beaufort scale, some of its purse seine catching vessels fishing for bluefin tuna in the eastern Atlantic and Mediterranean were unable to utilise their normal fishing days during the year, that Member State may carry over a maximum of 10 days lost until 11 July for the vessels concerned during the year.

4. Bluefin tuna fishing shall be permitted in the eastern Atlantic Ocean and the Mediterranean Sea by large-scale pelagic longlines catching vessels during the period from 1 January to 31 May.

5. Member States shall establish open seasons for their fleets, other than purse seiners and large scale pelagic long-liners, in their annual fishing plans.’.

(5) Article 16 is replaced by the following:

‘Article 16

By-catches

1. Each Member State shall make provision for by-catch of bluefin tuna within its quota and shall inform the Commission thereof when transmitting its annual fishing plan.

2. The level of by-catches of bluefin tuna shall not exceed 20 % of the total catches on board at the end of each fishing trip. The methodology used to calculate those by-catches, in relation to the total catch on board, shall be clearly defined in the annual fishing plan. By-catches may be calculated in weight or in number of specimens. The calculation in number of specimens shall only apply to tuna and tuna-like species managed by ICCAT. The level of authorised by-catches for the small-scale coastal vessels fleet may be calculated on an annual basis.
3. All by-catches of dead bluefin tuna, retained on board or discarded shall be deducted from the quota of the flag Member State, and recorded and reported to the Commission.
4. For Member States without a bluefin tuna quota, the by-catches concerned shall be deducted from the specific Union bluefin tuna by-catch quota established in accordance with the TFEU and Article 16 of Regulation (EU) No 1380/2013.
5. If the quota allocated to the Member State of the fishing vessel or trap concerned has already been exhausted, the catching of any bluefin tuna shall not be permitted and the Member States shall take the necessary measures to ensure its release. The processing and commercialisation of dead bluefin tuna shall be prohibited and all catches shall be recorded. Member States shall report information on such catches on an annual basis to the Commission, which shall transmit that information to the ICCAT Secretariat.
6. Vessels not fishing actively for bluefin tuna shall clearly separate any quantity of bluefin tuna kept on board from other species, to allow control authorities to monitor compliance with this Article. Those by-catches may be marketed insofar as they are accompanied by the eBCD.’.

Article 54

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

Article 53 shall apply from 21 June 2019.

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

Done at Brussels, 20 May 2019.

For the European Parliament
The President
A. TAJANI

For the Council
The President
G. CIAMBA

ANNEX

- (1) Table 4 of the CEM referred to in point 17 of Article 3 and in Article 17;
- (2) Figure 2 of the CEM referred to in point 17 of Article 3 and in Article 17;
- (3) Part VI of Annex I.E to the CEM referred to in point 21 of Article 3, in Article 21(2) and in point (i) of point (a) of Article 27(11);
- (4) Part VII of Annex I.E to the CEM referred to in point 29 of Article 3;
- (5) Format prescribed in Annex II.C to the CEM referred to in point (a) of Article 4(2);
- (6) Table 1 and Figure 1(1) of the CEM referred to in Article 9(1);
- (7) Table 2 and Figure 1(2) of the CEM referred to in Article 9(4);
- (8) Table 3 and Figure 1(3) of the CEM referred to in Article 9(5);
- (9) Format prescribed in Annex IV.C to the CEM referred to in point (e) of Article 10(1), point (c) of Article 27(3) and Article 39(16);
- (10) Annex III.A to the CEM referred to in Article 13(1);
- (11) Annex I.C to the CEM referred to in point (d) of Article 13(2), in point (b) of Article 24(1) and in the second subparagraph of Article 25(6);
- (12) Annex III.B to the CEM referred to in Article 14(2) and (3);
- (13) Annex I.D to the CEM referred to in Article 16(1) and (2);
- (14) Figure 3 of the CEM referred to in Article 18(1);
- (15) Table 5 of the CEM referred to in Article 18(1);
- (16) Figure 4 of the CEM referred to in Article 18(2);
- (17) Table 6 of the CEM referred to in Article 18(2);
- (18) Figure 5 of the CEM referred to in Article 18(3) and (4);
- (19) Table 7 of the CEM referred to in Article 18(3) and (4);
- (20) Exploratory protocol in Annex I.E to the CEM referred to in Article 19(1);
- (21) Notice of Intent to Undertake Exploratory Bottom Fishing' in Annex I.E to the CEM referred to in point (a) of Article 19(2);
- (22) Exploratory Bottom Fishing Trip Report in Annex I.E to the CEM referred to in point (b) of Article 19(2);
- (23) Elements for assessment of proposed exploratory bottom fishing activities in Annex I.E to the CEM referred to in point (b) of Article 20(2);
- (24) Exploratory Fishery Data Collection Form in Annex I.E to the CEM referred to in point (a) of Article 21(4);
- (25) Format prescribed for list of vessels in Annex II.C1 to the CEM referred to in point (a) of Article 22(1);
- (26) Format prescribed for deletion from the list of vessels in Annex II.C2 to the CEM referred to in point (b) of Article 22(1);
- (27) Format specified for individual authorisation for each vessel in Annex II.C3 to the CEM referred to in point (a) of Article 22(5);
- (28) Format prescribed for suspension of the authorisation in Annex II.C4 to the CEM referred to in point (b) of Article 22(5);
- (29) List of product form presentation codes in Annex II.K to the CEM referred to in point (e) of Article 24(1);

- (30) Model for fishing logbook in Annex II.A to the CEM referred to in Article 25(2);
 - (31) Format for catch report in Annex II.D to the CEM referred to in Article 25(6) and (8) and in point (b) of Article 26(9);
 - (32) Format for cancellation of catch report in Annex II.F to the CEM referred to in Article 25(6) and (7);
 - (33) Annex II.N to the CEM referred to in point (b) of Article 25(9);
 - (34) Format for data exchange in Annex II.E to the CEM referred to in point (b) of Article 26(9);
 - (35) Observer report in Annex II.M to the CEM referred to in points (a) of Article 27(11);
 - (36) Report in Annex II.G to the CEM transmitted daily by the observer as referred to in point (e) of Article 27(11);
 - (37) Rules on confidentiality in Annex II.B to the CEM referred to in Article 28(10) and Article 43;
 - (38) Surveillance Report Form in Annex IV.A to the CEM referred to in point (a) of Article 30(1) and point (a) of Article 45;
 - (39) Image of pennant in Annex IV.E to the CEM referred to in point (b) of Article 31;
 - (40) Rules on provision of boarding ladder in Annex IV.G to the CEM referred to in point (c) of Article 32;
 - (41) Inspection report in Annex IV.B to the CEM referred to in Article 33(1), point (a) of Article 34(2) and point (d) of Article 45;
 - (42) NAFO Inspection Seal in Annex IV.F to the CEM referred to in point (d) of Article 34(1);
 - (43) Port State Control Prior Request Form in Annex II.L to the CEM referred to in Article 39(8) and point (iii) of point (a) of Article 39(13), Article 40(2) and Article 41(1) and (2);
 - (44) Annex IV.H to the CEM on inspections referred to in Article 39(11).
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**REGULATION (EU) 2019/834 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 20 May 2019**

amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories

(Text with EEA relevance)

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 114 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 Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽⁴⁾ entered into force on 16 August 2012. The requirements it contains, namely, central clearing of standardised over-the-counter (OTC) derivative contracts, margin requirements and operational risk mitigation requirements for OTC derivative contracts that are not centrally cleared, reporting obligations for derivative contracts, requirements for central counterparties (CCPs) and requirements for trade repositories, contribute to reducing the systemic risk by increasing the transparency of the OTC derivatives market and reducing the counterparty credit risk and the operational risk associated with OTC derivatives.
- (2) The simplification of certain areas covered by Regulation (EU) No 648/2012 and a more proportionate approach to those areas are in line with the Commission's Regulatory Fitness and Performance programme which emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aim, in particular, at reducing regulatory and administrative burdens. That simplification and a more proportionate approach should, however, be without prejudice to the overarching objectives of promoting financial stability and mitigating systemic risks in line with the statement by G20 leaders at the 26 September 2009 Summit in Pittsburgh.
- (3) Efficient and resilient post-trading systems and collateral markets are essential elements of a well-functioning capital markets union, that underpin the efforts to support investments, growth and jobs, in line with the political priorities of the Commission.
- (4) In 2015 and 2016, the Commission carried out two public consultations on the application of Regulation (EU) No 648/2012. The Commission also received input on the application of that Regulation from the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽⁵⁾, the European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council ⁽⁶⁾ and the European System of Central Banks (ESCB). It appeared from those public consultations that the objectives of

⁽¹⁾ OJ C 385, 15.11.2017, p. 10.

⁽²⁾ OJ C 434, 15.12.2017, p. 63.

⁽³⁾ Position of the European Parliament of 18 April 2019 (not yet published in the Official Journal) and decision of the Council of 14 May 2019.

⁽⁴⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁽⁵⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁽⁶⁾ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

Regulation (EU) No 648/2012 were supported by stakeholders and that no major overhaul of that Regulation was necessary. On 23 November 2016, the Commission adopted a general report in accordance with Regulation (EU) No 648/2012. Although not all the provisions of Regulation (EU) No 648/2012 were fully applicable and therefore a comprehensive evaluation of that Regulation was not possible, that report identified areas for which targeted action was necessary to ensure that the objectives of Regulation (EU) No 648/2012 were reached in a more proportionate, efficient and effective manner.

- (5) Regulation (EU) No 648/2012 should cover all financial counterparties that might pose an important systemic risk for the financial system. The definition of financial counterparty should therefore be amended.
- (6) Employee share purchase plans are schemes, usually established by an undertaking by which persons can directly or indirectly subscribe, purchase, receive or own shares of that undertaking or of another undertaking within the same group, provided that that plan benefits at least the employees or former employees of that undertaking or of another undertaking within the same group, or the members or former members of the board of that undertaking or of another undertaking within the same group. The Commission's communication of 8 June 2017 on the Mid-Term Review of the Capital Markets Union Action Plan identifies measures relating to employee share purchase plans as a possible measure to strengthen the capital markets union with a view to fostering retail investment. Therefore, and in accordance with the principle of proportionality, an undertaking for collective investment in transferable securities (UCITS) or an alternative investment fund (AIF) that is set up exclusively for the purpose of serving one or more employee share purchase plans, should not be qualified as a financial counterparty.
- (7) Certain financial counterparties have a volume of activity in OTC derivatives markets that is too low to pose an important systemic risk for the financial system and is too low for central clearing to be economically viable. Those counterparties, commonly referred to as small financial counterparties, should be exempted from the clearing obligation, but they should remain subject to the requirement to exchange collateral to mitigate any systemic risk. However, where the position taken by the financial counterparty exceeds the clearing threshold for at least one class of OTC derivatives, calculated at the group level, the clearing obligation should apply to all classes of OTC derivatives, given the interconnectedness of financial counterparties and the possible systemic risk to the financial system that might arise if those OTC derivative contracts were not centrally cleared. The financial counterparty should have the possibility to demonstrate at any time that its positions no longer exceed the clearing threshold for any class of OTC derivatives, in which case the clearing obligation should cease to apply.
- (8) Non-financial counterparties are less interconnected than financial counterparties. Also, they are often predominantly active in only one class of OTC derivatives. Their activity therefore poses less of a systemic risk to the financial system than the activity of financial counterparties. The scope of the clearing obligation for non-financial counterparties that choose to calculate their positions every 12 months against the clearing thresholds should therefore be narrowed. Those non-financial counterparties should be subject to the clearing obligation only with regard to the classes of OTC derivatives that exceed the clearing threshold. Non-financial counterparties should nonetheless remain subject to the requirement to exchange collateral where any of the clearing thresholds is exceeded. Non-financial counterparties that choose not to calculate their positions against the clearing thresholds, should be subject to the clearing obligation for all classes of OTC derivatives. The non-financial counterparty should have the possibility to demonstrate at any time that its positions no longer exceed the clearing threshold for a class of OTC derivatives in which case the clearing obligation for that class of OTC derivatives should cease to apply.
- (9) In order to take account of any development in financial markets, ESMA should periodically review the clearing thresholds and update them where necessary. That periodic review should be accompanied by a report.
- (10) The requirement to clear certain OTC derivative contracts concluded before the clearing obligation takes effect creates legal uncertainty and operational complications, while providing limited benefits. In particular, that requirement creates additional costs and burdens for the counterparties to those contracts, and might also affect the smooth functioning of the market without significantly improving the uniform and coherent application of Regulation (EU) No 648/2012 or establishing a level playing field for market participants. That requirement should therefore be removed.

- (11) Counterparties that have a limited volume of activity in the OTC derivatives market face difficulties in accessing central clearing, whether as a client of a clearing member or through indirect clearing arrangements. Clearing members and clients of clearing members that provide clearing services, either directly to other counterparties or indirectly by allowing their own clients to provide those services to other counterparties, should therefore be required to do so under fair, reasonable, non-discriminatory and transparent commercial terms. While this requirement should not result in price regulation or an obligation to contract, clearing members and clients should be permitted to control the risks related to the clearing services offered, such as counterparty risks.
- (12) Information on the financial instruments covered by the authorisations of CCPs might not specify all classes of OTC derivatives which a CCP is authorised to clear. To ensure that ESMA can carry out its tasks and duties in relation to the clearing obligation, competent authorities should notify ESMA without delay of any information received from a CCP regarding the CCP's intention to start clearing a class of OTC derivatives that is covered by its existing authorisation.
- (13) It should be possible to temporarily suspend the clearing obligation in certain exceptional situations. Such a suspension should be possible where the criteria on the basis of which specific classes of OTC derivatives have been made subject to the clearing obligation are no longer met. That could be the case where particular classes of OTC derivatives become unsuitable for mandatory central clearing or where there has been a material change to one of those criteria in respect of particular classes of OTC derivatives. A suspension of the clearing obligation should also be possible where a CCP ceases to offer a clearing service for specific classes of OTC derivatives or for a specific type of counterparty and other CCPs cannot step in fast enough to take over those clearing services. The suspension of the clearing obligation should also be possible where it is considered necessary to avoid a serious threat to financial stability in the Union. In order to ensure financial stability and to avoid market disruption, ESMA should, while keeping in mind the G20 objectives, ensure that, where the abolition of the clearing obligation is appropriate, that abolition is instigated during the suspension of the clearing obligation and in sufficient time to enable the amendment of the relevant regulatory technical standards.
- (14) The obligation laid down in Regulation (EU) No 600/2014 of the European Parliament and of the Council ⁽⁷⁾ for counterparties to trade derivatives that are subject to the clearing obligation on trading venues is, in accordance with the trading obligation procedure detailed in that Regulation, triggered when a class of derivatives is declared to be subject to the clearing obligation. The suspension of the clearing obligation might prevent counterparties from being able to comply with the trading obligation. As a consequence, where the suspension of the clearing obligation has been requested, and where it is considered to be a material change in the criteria for the trading obligation to take effect, it should be possible for ESMA to propose the concurrent suspension of the trading obligation on the basis of Regulation (EU) No 648/2012 instead of Regulation (EU) No 600/2014.
- (15) The reporting of historic contracts has proven to be difficult because certain details which are now required to be reported were not required to be reported before the entry into force of Regulation (EU) No 648/2012. This has resulted in a high reporting failure rate and the poor quality of reported data, while the burden of reporting those contracts remains significant. There is therefore a high likelihood that those historic data will remain unused. Moreover, by the time the deadline for reporting historic contracts becomes effective, a number of those contracts will have already expired and, with them, the corresponding exposures and risks. For that reason, the requirement to report historic contracts should be removed.
- (16) Intragroup transactions involving non-financial counterparties represent a relatively small fraction of all OTC derivative contracts and are used primarily for internal hedging within groups. Those transactions therefore do not significantly contribute to systemic risk and interconnectedness, yet the obligation to report such transactions imposes significant costs and burdens on non-financial counterparties. Transactions between counterparties within a group, where at least one of the counterparties is a non-financial counterparty, should therefore be exempted from the reporting obligation, regardless of the place of establishment of the non-financial counterparty.
- (17) In 2017, the Commission launched a fitness check on public reporting by companies. The purpose of that check is to gather evidence on the consistency, coherence, effectiveness and efficiency of the Union reporting framework. Against that background, the possibility of avoiding unnecessary duplication of reporting and the

⁽⁷⁾ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

possibility of reducing or simplifying the reporting of non-OTC derivative contracts should be further analysed, taking into account the need for timely reporting and the measures adopted pursuant to Regulations (EU) No 648/2012 and (EU) No 600/2014. In particular, that analysis should consider the details reported, the accessibility of the data by relevant authorities, as well as measures to further simplify reporting chains for non-OTC derivative contracts without undue loss of information, in particular with respect to non-financial counterparties that are not subject to the clearing obligation. A more general assessment of the effectiveness and efficiency of the measures that were introduced in Regulation (EU) No 648/2012 to improve the functioning and reduce the burden of reporting OTC derivative contracts should be considered, when sufficient experience and data on the application of that Regulation is available, in particular regarding the quality and accessibility of data reported to trade repositories and regarding the take-up and implementation of delegated reporting.

- (18) To reduce the burden of reporting OTC derivative contracts for non-financial counterparties that are not subject to the clearing obligation, the financial counterparty should, as a rule, be solely responsible, and legally liable, for reporting on behalf of both itself and non-financial counterparties that are not subject to the clearing obligation with regard to OTC derivative contracts entered into by those counterparties, as well as for ensuring the correctness of the details reported. To ensure that the financial counterparty has the data it needs to fulfil its reporting obligation, the non-financial counterparty should provide the details relating to the OTC derivative contracts that the financial counterparty cannot be reasonably expected to possess. However, it should be possible for non-financial counterparties to choose to report their OTC derivative contracts. In such cases, the non-financial counterparty should inform the financial counterparty accordingly and should be responsible, and legally liable, for reporting that data and for ensuring their correctness.
- (19) The responsibility for reporting OTC derivative contracts where one or both of the counterparties are UCITs or AIFs should also be determined. It should therefore be specified that the management company of an UCITS is responsible and legally liable for reporting on behalf of that UCITS with regard to OTC derivative contracts entered into by that UCITS, as well as for ensuring the correctness of the details reported. Similarly, an AIF manager should be responsible and legally liable for reporting on behalf of that AIF with regard to OTC derivative contracts entered into by that AIF, as well as for ensuring the correctness of the details reported.
- (20) To avoid inconsistencies across the Union in the application of the risk-mitigation techniques, due to the complexity of the risk-management procedures requiring the timely, accurate and appropriately segregated exchange of collateral of counterparties which involve the use of internal models, competent authorities should validate those risk-management procedures or any significant change to those procedures, before they are applied.
- (21) The need for international regulatory convergence and the need for non-financial counterparties and small financial counterparties to reduce the risks associated with their currency risk exposures make it necessary to set out special risk-management procedures for physically settled foreign exchange forwards and physically settled foreign exchange swaps. In view of their specific risk profile, it is appropriate to restrict the mandatory exchange of variation margins on physically settled foreign exchange forwards and physically settled foreign exchange swaps to transactions between the most systemic counterparties in order to limit the build-up of systemic risk and to avoid international regulatory divergence. International regulatory convergence should also be ensured with regard to risk-management procedures for other classes of derivatives.
- (22) Post-trade risk reduction services include services such as portfolio compression. Portfolio compression is excluded from the scope of the trading obligation established in Regulation (EU) No 600/2014. In order to align Regulation (EU) No 648/2012 with Regulation (EU) No 600/2014, where necessary and appropriate, while taking into account the differences between those two Regulations, the potential to circumvent the clearing obligation and the extent to which post-trade risk reduction services mitigate or reduce risks, the Commission, in cooperation with ESMA and the ESRB, should assess which trades resulting from post-trade risk reduction services, if any, should be granted an exemption from the clearing obligation.

- (23) To increase transparency and predictability of the initial margins and to restrain CCPs from modifying their initial margin models in ways that could appear procyclical, CCPs should provide their clearing members with tools to simulate their initial margin requirements and should provide them with a detailed overview of the initial margin models they use. This is consistent with the international standards published by the Committee on Payments and Market Infrastructures and the Board of the International Organisation of Securities Commissions, in particular with the disclosure framework published in December 2012 and the public quantitative disclosure standards for CCPs published in 2015, which are relevant for fostering an accurate understanding of the risks and costs involved in any participation in a CCP by clearing members and enhancing transparency of CCPs towards market participants.
- (24) Member States' national insolvency laws should not prevent CCPs from being able to perform with sufficient legal certainty the transfer of client positions or to pay the proceeds of a liquidation directly to clients in case of insolvency of a clearing member with regard to assets held in omnibus and individual segregated client accounts. To provide incentives for clearing and to improve access to it, Member States' national insolvency laws should not prevent CCPs from following the default procedures in accordance with Regulation (EU) No 648/2012 with regard to assets and positions held in omnibus and individual segregated client accounts held at the clearing member and at the CCP. Where indirect clearing arrangements are established, indirect clients should continue nevertheless to benefit from protection which is equivalent to that provided for under the segregation and portability rules and default procedures laid down in Regulation (EU) No 648/2012.
- (25) The fines imposed by ESMA on trade repositories under its direct supervision should be effective, proportionate and dissuasive enough to ensure the effectiveness of ESMA's supervisory powers and to increase the transparency of derivative positions and exposures. The amounts of fines initially provided for in Regulation (EU) No 648/2012 have proven insufficiently dissuasive in view of the current turnover of the trade repositories, which could potentially limit the effectiveness of ESMA's supervisory powers under that Regulation in relation to trade repositories. The upper limit of the basic amounts of fines should therefore be increased.
- (26) Third-country authorities should have access to data reported to Union trade repositories where certain conditions guaranteeing the treatment of those data are met by the third country and where that third country provides for a legally binding and enforceable obligation granting Union authorities direct access to data reported to trade repositories in that third country.
- (27) Regulation (EU) 2015/2365 of the European Parliament and of the Council ⁽⁸⁾ allows for a simplified registration procedure for trade repositories that are already registered in accordance with Regulation (EU) No 648/2012 and that wish to extend that registration to provide their services in respect of securities financing transactions. A similar simplified registration procedure should be put in place for the registration of trade repositories that are already registered in accordance with Regulation (EU) 2015/2365 and wish to extend that registration to provide their services in respect of derivative contracts.
- (28) The insufficient quality and transparency of data made available by trade repositories makes it difficult for entities that have been granted access to those data to use them to monitor derivatives markets and prevents regulators and supervisors from identifying financial stability risks in due time. To improve data quality and transparency, and to align the reporting requirements of Regulation (EU) No 648/2012 with those of Regulations (EU) 2015/2365 and (EU) No 600/2014, further harmonisation of the reporting rules and requirements is necessary, in particular, further harmonisation of data standards, formats, methods, and arrangements for reporting, as well as further harmonisation of the procedures to be applied by trade repositories for the validation of data reported as to their completeness and correctness and of the procedures for the reconciliation of data with other trade repositories. Moreover, trade repositories should grant non-reporting counterparties access to all data reported on their behalf on reasonable commercial terms upon request.

⁽⁸⁾ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

- (29) In terms of the services provided by trade repositories, Regulation (EU) No 648/2012 has established a competitive environment. Counterparties should therefore be able to choose the trade repository to which they wish to report and should be able to switch trade repositories if they so choose. To facilitate such switching and to ensure the continued availability of data without duplication, trade repositories should establish appropriate policies to ensure the orderly transfer of data reported to other trade repositories where requested by a counterparty that is subject to the reporting obligation.
- (30) Regulation (EU) No 648/2012 establishes that the clearing obligation is not to apply to pension scheme arrangements until an appropriate technical solution is developed by CCPs for the transfer of non-cash collateral as variation margins. As no viable solution facilitating the participation of pension scheme arrangements in central clearing has been developed so far, that transitional period should be extended to apply for at least a further two years. Central clearing should however remain the ultimate aim, considering that current regulatory and market developments enable market participants to develop appropriate technical solutions within that period. With the assistance of ESMA, the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁹⁾, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council ⁽¹⁰⁾ and the ESRB, the Commission should monitor the progress made by CCPs, clearing members and pension scheme arrangements towards viable solutions facilitating the participation of pension scheme arrangements in central clearing and prepare a report on that progress. That report should also cover the solutions and the related costs for pension scheme arrangements, thereby taking into account regulatory and market developments such as changes to the type of financial counterparty that is subject to the clearing obligation. In order to cater for developments that were not foreseen at the time of adoption of this Regulation, the Commission should be empowered to extend that transitional period twice for a period of one year, after having carefully assessed the need for such an extension.
- (31) The transitional period during which pension scheme arrangements were exempted from the clearing obligation expired on 16 August 2018. For reasons of legal certainty, and to avoid any discontinuity, it is necessary to retroactively apply the extension of that transitional period to OTC derivative contracts entered into by pension scheme arrangements from 17 August 2018 until 16 June 2019.
- (32) In order to simplify the regulatory framework, consideration should be given to the extent to which it is necessary and appropriate to align the trading obligation under Regulation (EU) No 600/2014 with changes made under this Regulation to the clearing obligation for derivatives, in particular, to the scope of the entities that are subject to the clearing obligation. A more general assessment of the effects of this Regulation on the level of clearing by different types of counterparty and on the distribution of clearing within each type of counterparty, as well as of the accessibility of clearing services, including the efficiency of the changes made under this Regulation with regard to the provision of clearing services under fair, reasonable, non-discriminatory and transparent commercial terms in facilitating access to clearing, should be undertaken when sufficient experience and data on the application of this Regulation are available.
- (33) To ensure the consistent harmonisation of when commercial terms relating to the provision of clearing services are considered to be fair, reasonable, non-discriminatory and transparent, and in order to allow additional time for market participants to develop clearing solutions for pension scheme arrangements under certain conditions, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of specifying the conditions under which commercial terms relating to the provision of clearing services are considered to be fair, reasonable, non-discriminatory and transparent, and in respect of extending the transitional period during which the clearing obligation should not apply to OTC derivative contracts entered into by pension scheme arrangements. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹¹⁾. In particular, to ensure equal participation in the

⁽⁹⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽¹⁰⁾ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

⁽¹¹⁾ OJ L 123, 12.5.2016, p. 1.

preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (34) To ensure uniform conditions for the implementation of this Regulation, and in particular with regard to the suspension of the clearing obligation and of the trading obligation and with regard to direct access by the relevant authorities of third countries to information contained in trade repositories established in the Union, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹²⁾. The Commission should adopt immediately applicable implementing acts to suspend the clearing obligation and the trading obligation for specific classes of OTC derivatives because it is necessary to have a swift decision ensuring legal certainty about the outcome of the suspension procedure and therefore there are duly justified imperative grounds of urgency.
- (35) To ensure consistent harmonisation of rules on risk-mitigation techniques, registration of trade repositories and reporting requirements, the Commission should be empowered to adopt regulatory technical standards developed by EBA or ESMA with regard to the following: supervisory procedures to ensure initial and ongoing validation of the risk-management procedures that require the timely, accurate and appropriately segregated exchange of collateral; the details of the simplified application for an extension of the registration of a trade repository that is already registered under Regulation (EU) 2015/2365; the procedures for the reconciliation of data between trade repositories, the procedures to be applied by the trade repository to verify the compliance with the reporting requirements by the reporting counterparty or submitting entity and to verify the completeness and correctness of the data reported; the terms and conditions, the arrangements and the required documentation under which certain entities are granted access to trade repositories. The Commission should adopt those regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulations (EU) No 1093/2010 and (EU) No 1095/2010.
- (36) The Commission should also be empowered to adopt implementing technical standards developed by ESMA with regard to the data standards for the information to be reported for different classes of derivatives and with regard to the methods and arrangements for reporting and the format of the application for an extension of the registration of a trade repository that is already registered under Regulation (EU) 2015/2365. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1095/2010.
- (37) Since the objectives of this Regulation, namely, to ensure that the rules are proportionate, do not lead to unnecessary administrative burdens or compliance costs, do not put financial stability at risk, and increase the transparency of OTC derivative positions and exposures, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (38) The application of certain provisions of this Regulation should be deferred to establish all essential implementing measures and to allow market participants to take the necessary steps for compliance purposes.
- (39) Regulation (EU) No 648/2012 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 648/2012 is amended as follows:

- (1) in Article 2, point (8) is replaced by the following:

‘(8) “financial counterparty” means:

- (a) an investment firm authorised in accordance with Directive 2014/65/EU of the European Parliament and of the Council (*);

⁽¹²⁾ 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 (OJ L 55, 28.2.2011, p. 13).

- (b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council (**);
- (c) an insurance undertaking or reinsurance undertaking authorised in accordance with Directive 2009/138/EC of the European Parliament and of the Council (***);
- (d) a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC, unless that UCITS is set up exclusively for the purpose of serving one or more employee share purchase plans;
- (e) an institution for occupational retirement provision (IORP), as defined in point (1) of Article 6 of Directive (EU) 2016/2341 of the European Parliament and of the Council (****);
- (f) an alternative investment fund (AIF), as defined in point (a) of Article 4(1) of Directive 2011/61/EU, which is either established in the Union or managed by an alternative investment fund manager (AIFM) authorised or registered in accordance with that Directive, unless that AIF is set up exclusively for the purpose of serving one or more employee share purchase plans, or unless that AIF is a securitisation special purpose entity as referred to in point (g) of Article 2(3) of Directive 2011/61/EU, and, where relevant, its AIFM established in the Union;
- (g) a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council (*****);

(*) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(**) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(***) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

(****) Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

(*****) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).;

(2) Article 4 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (a)(i) to (a)(iv) are replaced by the following:

- ‘(i) between two financial counterparties that meet the conditions set out in the second subparagraph of Article 4a(1);
- (ii) between a financial counterparty that meets the conditions set out in the second subparagraph of Article 4a(1) and a non-financial counterparty that meets the conditions set out in the second subparagraph of Article 10(1);
- (iii) between two non-financial counterparties that meet the conditions set out in the second subparagraph of Article 10(1);
- (iv) between, on the one side, a financial counterparty that meets the conditions set out in the second subparagraph of Article 4a(1) or a non-financial counterparty that meets the conditions set out in the second subparagraph of Article 10(1), and, on the other side, an entity established in a third country that would be subject to the clearing obligation if it were established in the Union;’

(ii) point (b) is replaced by the following:

- ‘(b) they are entered into or novated on or after the date on which the clearing obligation takes effect, provided that, on the date they are entered into or novated, both counterparties meet the conditions set out in point (a);’

(b) the following paragraph is inserted:

‘3a. Without being obliged to contract, clearing members and clients which provide clearing services, whether directly or indirectly, shall provide those services under fair, reasonable, non-discriminatory and transparent commercial terms. Such clearing members and clients shall take all reasonable measures to identify, prevent, manage and monitor conflicts of interest, in particular between the trading unit and the clearing unit, that may adversely affect the fair, reasonable, non-discriminatory and transparent provision of clearing services. Such measures shall also be taken where trading and clearing services are provided by different legal entities belonging to the same group.

Clearing members and clients shall be permitted to control the risks related to the clearing services offered.

The Commission is empowered to adopt delegated acts in accordance with Article 82 to supplement this Regulation by specifying the conditions under which the commercial terms referred to in the first subparagraph of this paragraph are to be considered to be fair, reasonable, non-discriminatory and transparent, based on the following:

- (a) fairness and transparency requirements with respect to fees, prices, discount policies and other general contractual terms and conditions regarding the price list, without prejudice to the confidentiality of contractual arrangements with individual counterparties;
- (b) factors that constitute reasonable commercial terms to ensure unbiased and rational contractual arrangements;
- (c) requirements that facilitate clearing services on a fair and non-discriminatory basis, having regard to related costs and risks, so that any differences in prices charged are proportionate to costs, risks and benefits; and
- (d) risk control criteria for the clearing member or client related to the clearing services offered.’;

(3) the following article is inserted:

‘Article 4a

Financial counterparties that are subject to the clearing obligation

1. Every 12 months, a financial counterparty taking positions in OTC derivative contracts may calculate its aggregate month-end average position for the previous 12 months in accordance with paragraph 3.

Where a financial counterparty does not calculate its positions, or where the result of that calculation exceeds any of the clearing thresholds specified pursuant to point (b) of Article 10(4), the financial counterparty shall:

- (a) immediately notify ESMA and the relevant competent authority thereof, and, where relevant, indicate the period used for the calculation;
- (b) establish clearing arrangements within four months after the notification referred to in point (a) of this subparagraph; and
- (c) become subject to the clearing obligation referred to in Article 4 for all OTC derivative contracts pertaining to any class of OTC derivatives which is subject to the clearing obligation entered into or novated more than four months following the notification referred to in point (a) of this subparagraph.

2. A financial counterparty that is subject to the clearing obligation referred to in Article 4 on 17 June 2019 or that becomes subject to the clearing obligation in accordance with the second subparagraph of paragraph 1, shall remain subject to that obligation and shall continue clearing until that financial counterparty demonstrates to the relevant competent authority that its aggregate month-end average position for the previous 12 months does not exceed the clearing threshold specified pursuant to point (b) of Article 10(4).

The financial counterparty shall be able to demonstrate to the relevant competent authority that the calculation of the aggregate month-end average position for the previous 12 months does not lead to a systematic underestimation of that position.

3. In calculating the positions referred to in paragraph 1, the financial counterparty shall include all OTC derivative contracts entered into by that financial counterparty or entered into by other entities within the group to which that financial counterparty belongs.

Notwithstanding the first subparagraph, for UCITS and AIFs, the positions referred to in paragraph 1 shall be calculated at the level of the fund.

UCITS management companies which manage more than one UCITSs and AIFMs which manage more than one AIF shall be able to demonstrate to the relevant competent authority that the calculation of positions at the fund level does not lead to:

- (a) a systematic underestimation of the positions of any of the funds they manage or the positions of the manager; and
- (b) a circumvention of the clearing obligation.

The relevant competent authorities of the financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure the effective calculation of the positions at the group level.;

(4) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where a competent authority authorises a CCP to clear a class of OTC derivatives under Article 14 or 15, or where a class of OTC derivatives which a CCP intends to start clearing is covered by an existing authorisation granted in accordance with Article 14 or 15, the competent authority shall immediately notify ESMA of that authorisation or of the class of OTC derivatives which the CCP intends to start clearing.;

(b) in paragraph 2, point (c) is deleted;

(5) Article 6 is amended as follows:

(a) in paragraph 2, point (e) is deleted;

(b) paragraph 3 is replaced by the following:

‘3. Where a CCP is no longer authorised or recognised in accordance with this Regulation to clear a specific class of OTC derivatives, ESMA shall immediately remove that CCP from the public register in relation to that class of OTC derivatives.;

(6) the following article is inserted:

‘Article 6a

Suspension of clearing obligation

1. ESMA may request that the Commission suspend the clearing obligation referred to in Article 4(1) for specific classes of OTC derivatives or for a specific type of counterparty, where one of the following conditions is met:

- (a) the specific classes of OTC derivatives are no longer suitable for central clearing in accordance with the criteria referred to in the first subparagraph of Article 5(4) and in Article 5(5);
- (b) a CCP is likely to cease clearing those specific classes of OTC derivatives and no other CCP is able to clear those specific classes of OTC derivatives without interruption;
- (c) the suspension of the clearing obligation for those specific classes of OTC derivatives or for a specific type of counterparty is necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union and that suspension is proportionate to those aims.

For the purposes of point (c) of the first subparagraph, prior to the request referred to in the first subparagraph, ESMA shall consult the ESRB and the competent authorities designated in accordance with Article 22.

The request referred to in the first subparagraph shall be accompanied by evidence that at least one of the conditions set out therein is met.

Where the suspension of the clearing obligation is considered by ESMA to be a material change in the criteria for the trading obligation to take effect referred to in Article 32(5) of Regulation (EU) No 600/2014, the request referred to in the first subparagraph of this paragraph may also include a request to suspend the trading obligation laid down in Article 28(1) and (2) of that Regulation for the same specific classes of OTC derivatives that are subject to the request to suspend the clearing obligation.

2. Under the conditions set out in paragraph 1 of this Article, the competent authorities responsible for the supervision of clearing members and the competent authorities designated in accordance with Article 22 may request that ESMA submit a request for a suspension of the clearing obligation to the Commission. The request by the competent authority shall provide reasons and submit evidence showing that at least one of the conditions set out in the first subparagraph of paragraph 1 of this Article is met.

ESMA shall, within 48 hours of receipt of the request from the competent authority referred to in the first subparagraph of this paragraph, on the basis of the reasons and evidence provided by the competent authority, either request that the Commission suspend the clearing obligation referred to in Article 4(1) or reject the request referred to in the first subparagraph of this paragraph. ESMA shall inform the competent authority concerned of its decision. Where ESMA rejects the request by the competent authority, it shall provide reasons therefor in writing.

3. The requests referred to in paragraphs 1 and 2 shall not be made public.

4. The Commission shall, without undue delay after receipt of the request referred to in paragraph 1, on the basis of the reasons and evidence provided by ESMA, either suspend the clearing obligation for the specific classes of OTC derivatives or for the specific type of counterparty referred to in paragraph 1 by way of an implementing act, or reject the requested suspension. Where the Commission rejects the requested suspension, it shall provide reasons therefor in writing to ESMA. The Commission shall immediately inform the European Parliament and the Council thereof and forward them the reasons provided to ESMA. Such information shall not be made public.

The implementing act referred to in the first subparagraph of this paragraph shall be adopted in accordance with the procedure referred to in Article 86(3).

5. Where requested by ESMA in accordance with the fourth subparagraph of paragraph 1 of this Article, the implementing act suspending the clearing obligation for specific classes of OTC derivatives may also suspend the trading obligation laid down in Article 28(1) and (2) of Regulation (EU) No 600/2014 for the same specific classes of OTC derivatives that are subject to the suspension of the clearing obligation.

6. The suspension of the clearing obligation and, where applicable, the trading obligation shall be communicated to ESMA and shall be published in the *Official Journal of the European Union*, on the Commission's website and in the public register referred to in Article 6.

7. The suspension of the clearing obligation referred to in paragraph 4 shall be valid for an initial period of no more than three months from the date of application of that suspension.

The suspension of the trading obligation referred to in paragraph 5 shall be valid for the same initial period.

8. Where the grounds for the suspension continue to apply, the Commission may, by way of an implementing act, extend the suspension referred to in paragraph 4 for additional periods of no more than three months, with the total period of the suspension of no more than 12 months. Any extensions of the suspension shall be published in accordance with paragraph 6.

The implementing act referred to in the first subparagraph of this paragraph shall be adopted in accordance with the procedure referred to in Article 86(3).

ESMA shall, in sufficient time before the end of the suspension period referred to in paragraph 7 of this Article or of the extension period referred to in the first subparagraph of this paragraph, issue an opinion to the Commission on whether the grounds for the suspension continue to apply. For the purposes of point (c) of the first subparagraph of paragraph 1 of this Article, ESMA shall consult the ESRB and the competent authorities designated in accordance with Article 22. ESMA shall send a copy of that opinion to the European Parliament and to the Council. That opinion shall not be made public.

The implementing act extending the suspension of the clearing obligation may also extend the period of the suspension of the trading obligation referred to in paragraph 7.

The extension of the suspension of the trading obligation shall be valid for the same period as the extension of the suspension of the clearing obligation.;

(7) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported in accordance with paragraphs 1a to 1f of this Article to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract.

The reporting obligation shall apply to derivative contracts which:

- (a) were entered into before 12 February 2014 and remain outstanding on that date;
- (b) were entered into on or after 12 February 2014.

Notwithstanding Article 3, the reporting obligation shall not apply to derivative contracts within the same group where at least one of the counterparties is a non-financial counterparty or would be qualified as a non-financial counterparty if it were established in the Union, provided that:

- (a) both counterparties are included in the same consolidation on a full basis;
- (b) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures; and
- (c) the parent undertaking is not a financial counterparty.

Counterparties shall notify their competent authorities of their intention to apply the exemption referred to in the third subparagraph. The exemption shall be valid unless the notified competent authorities do not agree upon fulfilment of the conditions referred to in the third subparagraph within three months of the date of notification.;

- (b) the following paragraphs are inserted:

‘1a. Financial counterparties shall be solely responsible, and legally liable, for reporting on behalf of both counterparties, the details of OTC derivative contracts concluded with a non-financial counterparty that does not meet the conditions referred to in the second subparagraph of Article 10(1), as well as for ensuring the correctness of the details reported.

To ensure that the financial counterparty has all the data it needs to fulfil the reporting obligation, the non-financial counterparty shall provide the financial counterparty with the details of the OTC derivative contracts concluded between them, which the financial counterparty cannot be reasonably expected to possess. The non-financial counterparty shall be responsible for ensuring that those details are correct.

Notwithstanding the first subparagraph, non-financial counterparties who have already invested in a reporting system may decide to report the details of their OTC derivative contracts with financial counterparties to a trade repository. In that case, the non-financial counterparties shall inform the financial counterparties with which they have concluded OTC derivative contracts of their decision prior to reporting those details. In that situation, the non-financial counterparties shall be responsible, and legally liable, for reporting those details and for ensuring their correctness.

A non-financial counterparty that does not meet the conditions referred to in the second subparagraph of Article 10(1) and that concludes an OTC derivative contract with an entity established in a third country shall not be required to report pursuant to this Article and shall not be legally liable for reporting or ensuring the correctness of the details of such OTC derivative contracts, provided that:

- (a) that third-country entity would be qualified as a financial counterparty if it were established in the Union;
- (b) the legal regime for reporting to which that third-country entity is subject has been declared equivalent pursuant to Article 13; and
- (c) the third-country financial counterparty has reported such information pursuant to that third-country legal regime for reporting to a trade repository that is subject to a legally binding and enforceable obligation to grant the entities referred to in Article 81(3) direct and immediate access to the data.

1b. The management company of a UCITS shall be responsible, and legally liable, for reporting the details of OTC derivative contracts to which that UCITS is a counterparty, as well as for ensuring the correctness of the details reported.

1c. The AIFM shall be responsible, and legally liable, for reporting the details of OTC derivative contracts to which the relevant AIF is a counterparty, as well as for ensuring the correctness of the details reported.

1d. The authorised entity that is responsible for managing and acting on behalf of an IORP that, in accordance with national law, does not have legal personality shall be responsible, and legally liable, for reporting the details of OTC derivative contracts to which that IORP is a counterparty, as well as for ensuring the correctness of the details reported.

1e. Counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication.

1f. Counterparties and CCPs that are subject to the reporting obligation referred to in paragraph 1 may delegate that reporting obligation.;

(c) paragraph 6 is replaced by the following:

‘6. To ensure uniform conditions of application of paragraphs 1 and 3, ESMA shall, in close cooperation with the ESCB, develop draft implementing technical standards specifying:

(a) the data standards and formats for the information to be reported, which shall include at least the following:

- (i) global legal entity identifiers (LEIs);
- (ii) international securities identification numbers (ISINs);
- (iii) unique trade identifiers (UTIs);

(b) the methods and arrangements for reporting;

(c) the frequency of the reports;

(d) the date by which derivative contracts are to be reported.

In developing those draft implementing technical standards, ESMA shall take into account international developments and standards agreed upon at Union or global level, and their consistency with the reporting requirements laid down in Article 4 of Regulation (EU) 2015/2365 (*) and Article 26 of Regulation (EU) No 600/2014.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2020.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

(*) Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).;

(8) Article 10 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. Every 12 months, a non-financial counterparty taking positions in OTC derivative contracts may calculate its aggregate month-end average position for the previous 12 months in accordance with paragraph 3.

Where a non-financial counterparty does not calculate its positions, or where the result of that calculation in respect of one or more classes of OTC derivatives exceeds the clearing thresholds specified pursuant to point (b) of the first subparagraph of paragraph 4, that non-financial counterparty shall:

- (a) immediately notify ESMA and the relevant competent authority thereof, and, where relevant, indicate the period used for the calculation;
- (b) establish clearing arrangements within four months of the notification referred to in point (a) of this subparagraph;
- (c) become subject to the clearing obligation referred to in Article 4 for the OTC derivative contracts entered into or novated more than four months following the notification referred to in point (a) of this subparagraph that pertain to those asset classes in respect of which the result of the calculation exceeds the clearing thresholds or, where the non-financial counterparty has not calculated its position, that pertain to any class of OTC derivatives which is subject to the clearing obligation.

2. A non-financial counterparty that is subject to the clearing obligation referred to in Article 4 on 17 June 2019 or that becomes subject to the clearing obligation in accordance with the second subparagraph of paragraph 1 of this Article, shall remain subject to that obligation and shall continue clearing until that non-financial counterparty demonstrates to the relevant competent authority that its aggregate month-end average position for the previous 12 months does not exceed the clearing threshold specified pursuant to point (b) of paragraph 4 of this Article.

The non-financial counterparty shall be able to demonstrate to the relevant competent authority that the calculation of the aggregate month-end average position for the previous 12 months does not lead to a systematic underestimation of the position.;

(b) the following paragraph is inserted:

‘2a. The relevant competent authorities of the non-financial counterparty and of the other entities within the group shall establish cooperation procedures to ensure the effective calculation of the positions at the group level.’;

(c) in paragraph 4, the fourth subparagraph is replaced by the following:

‘After consulting the ESRB and other relevant authorities, ESMA shall periodically review the clearing thresholds referred to in point (b) of the first subparagraph and, where necessary taking into account, in particular, the interconnectedness of financial counterparties, propose to amend the regulatory technical standards in accordance with this paragraph.

That periodic review shall be accompanied by a report by ESMA on the subject.’;

(9) in Article 11, paragraph 15 is amended as follows:

(a) the first subparagraph is amended as follows:

(i) point (a) is replaced by the following:

‘(a) the risk-management procedures, including the levels and type of collateral and segregation arrangements referred to in paragraph 3.’;

(ii) the following point is inserted:

‘(aa) the supervisory procedures to ensure initial and ongoing validation of those risk-management procedures.’;

(b) the third subparagraph is replaced by the following:

‘The ESAs shall submit those draft regulatory technical standards, except for those referred to in point (aa) of the first subparagraph, to the Commission by 18 July 2018.

EBA, in cooperation with ESMA and EIOPA, shall submit the draft regulatory technical standards referred to in point (aa) of the first subparagraph to the Commission by 18 June 2020.’;

(10) in Article 38, the following paragraphs are added:

‘6. A CCP shall provide its clearing members with a simulation tool allowing them to determine the amount of additional initial margin, on a gross basis, that the CCP may require upon the clearing of a new transaction. That tool shall only be accessible on a secured access basis, and the results of the simulation shall not be binding.

7. A CCP shall provide its clearing members with information on the initial margin models it uses. That information shall:

(a) clearly explain the design of the initial margin model and how it operates;

(b) clearly describe the key assumptions and limitations of the initial margin model and the circumstances under which those assumptions are no longer valid;

(c) be documented.’;

(11) in Article 39, the following paragraph is added:

‘11. Member States’ national insolvency laws shall not prevent a CCP from acting in accordance with Article 48(5), (6) and (7) with regard to the assets and positions recorded in accounts as referred to in paragraphs 2 to 5 of this Article.’;

(12) Article 56 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. For the purposes of Article 55(1), a trade repository shall submit either of the following to ESMA:

(a) an application for registration;

(b) an application for an extension of the registration where the trade repository is already registered under Chapter III of Regulation (EU) 2015/2365;’

(b) paragraph 3 is replaced by the following:

‘3. To ensure the consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the following:

(a) the details of the application for the registration referred to in point (a) of paragraph 1;

(b) the details of the simplified application for the extension of the registration referred to in point (b) of paragraph 1.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2020.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010;’

(c) paragraph 4 is replaced by the following:

‘4. To ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards specifying the following:

(a) the format of the application for registration referred to in point (a) of paragraph 1;

(b) the format of the application for an extension of the registration referred to in point (b) of paragraph 1.

With regard to point (b) of the first subparagraph, ESMA shall develop a simplified format.

ESMA shall submit those draft implementing technical standards to the Commission by 18 June 2020.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010;’

(13) in Article 62, paragraph 5 is replaced by the following:

‘5. If a request for records of telephone or data traffic referred to in point (e) of paragraph 1 requires a national competent authority to be authorised by a judicial authority in accordance with national rules, ESMA shall also apply for such authorisation. ESMA may also apply for such authorisation as a precautionary measure.’

(14) Article 63 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. In order to carry out its duties under this Regulation, ESMA may conduct all necessary on-site inspections on any business premises, land or property of the legal persons referred to in Article 61(1). Where the proper conduct and efficiency of the inspection so require, ESMA may conduct the on-site inspection without prior announcement.

2. The officials and other persons authorised by ESMA to conduct an on-site inspection may enter any business premises, land or property of the legal persons who are subject to an investigation decision adopted by ESMA and shall have all the powers referred to in Article 62(1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.’

(b) paragraph 8 is replaced by the following:

‘8. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraph 7 requires a national competent authority to be authorised by a judicial authority in accordance with national rules, ESMA shall also apply for such authorisation. ESMA may also apply for such authorisation as a precautionary measure.’

(15) Article 64 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. When submitting the file with the findings referred to in paragraph 3 to ESMA, the investigation officer shall notify the persons who are subject to the investigations. Such persons shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or to ESMA’s internal preparatory documents.’;

(b) paragraph 8 is replaced by the following:

‘8. ESMA shall refer matters to the relevant authorities for investigation and possible criminal prosecution where, in carrying out its duties under this Regulation, it finds that there are serious indications of the possible existence of facts that it knows to be liable to constitute a criminal offence under the applicable law. In addition, ESMA shall refrain from imposing fines or periodic penalty payments where it is aware that a prior acquittal or conviction arising from identical fact or facts which are substantially the same has already acquired the force of *res judicata* as the result of criminal proceedings under national law.’;

(16) in Article 65, paragraph 2 is amended as follows:

(a) in point (a), ‘EUR 20 000’ is replaced by ‘EUR 200 000’;

(b) point (b) is replaced by the following,;

‘(b) for the infringements referred to in points (a), (b) and (d) to (k) of Section I of Annex I, and in points (a), (b) and (h) of Section II of Annex I, the amounts of the fines shall be at least EUR 5 000 and shall not exceed EUR 100 000.’;

(c) the following point is added:

‘(c) for the infringements referred to in Section IV of Annex I, the amounts of the fines shall be at least EUR 5 000 and shall not exceed EUR 10 000.’;

(17) in Article 67, paragraph 1 is replaced by the following:

‘1. Before taking any decision under Article 73(1) and on a periodic penalty payment under Article 66, ESMA shall give the persons who are subject to the proceedings the opportunity to be heard on its findings. ESMA shall base its decisions only on findings on which the persons who are subject to the proceedings have had an opportunity to comment.

The first subparagraph of this paragraph shall not apply to the decisions referred to in points (a), (c) and (d) of Article 73(1) if urgent action is needed in order to prevent significant and imminent damage to the financial system or to prevent significant and imminent damage to the integrity, transparency, efficiency and orderly functioning of financial markets, including to the stability or the correctness of data reported to a trade repository. In such a case, ESMA may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.’;

(18) in Article 72, paragraph 2 is replaced by the following:

‘2. The amount of any fee charged to a trade repository shall cover all reasonable administrative costs incurred by ESMA in relation to its registration and ESMA’s supervisory activities and shall be proportionate to the turnover of the trade repository concerned and the type of registration and supervision exercised by ESMA.’;

(19) the following article is inserted:

‘Article 76a

Mutual direct access to data

1. Where necessary for the exercise of their duties, relevant authorities of third countries in which one or more trade repositories are established shall have direct access to information in trade repositories established in the Union, provided that the Commission has adopted an implementing act in accordance with paragraph 2 to that effect.

2. Upon the submission of a request by the authorities referred to in paragraph 1 of this Article, the Commission may adopt implementing acts, in accordance with the examination procedure referred to in Article 86(2), determining whether the legal framework of the third country of the requesting authority fulfils all of the following conditions:

- (a) trade repositories established in that third country are duly authorised;
- (b) effective supervision and enforcement of trade repositories takes place in that third country on an ongoing basis;
- (c) guarantees of professional secrecy exist, including the protection of business secrets shared with third parties by the authorities, and they are at least equivalent to those set out in this Regulation;
- (d) trade repositories authorised in that third country are subject to a legally binding and enforceable obligation to grant the entities referred to in Article 81(3) direct and immediate access to the data.;

(20) in Article 78, the following paragraphs are added:

‘9. A trade repository shall establish the following procedures and policies:

- (a) procedures for the effective reconciliation of data between trade repositories;
- (b) procedures to verify the completeness and correctness of the data reported;
- (c) policies for the orderly transfer of data to other trade repositories where requested by the counterparties or CCPs referred to in Article 9 or where otherwise necessary.

10. To ensure the consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying:

- (a) the procedures for the reconciliation of data between trade repositories;
- (b) the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported under Article 9.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2020.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

(21) in Article 80, the following paragraph is inserted:

‘5a. Upon request, a trade repository shall provide counterparties that are not required to report the details of their OTC derivative contracts pursuant to Article 9(1a) to (1d) and counterparties and CCPs which have delegated their reporting obligation pursuant to Article 9(1f) with access to the information reported on their behalf.;

(22) Article 81 is amended as follows:

(a) in paragraph 3, the following point is added:

‘(q) the relevant authorities of a third country in respect of which an implementing act pursuant to Article 76a has been adopted.;

(b) paragraph 5 is replaced by the following:

‘5. In order to ensure the consistent application of this Article, ESMA shall, after consulting the members of the ESCB, develop draft regulatory technical standards specifying the following:

- (a) the information to be published or made available in accordance with paragraphs 1 and 3;
- (b) the frequency of publication of the information referred to in paragraph 1;
- (c) the operational standards required to aggregate and compare data across trade repositories and for the entities referred to in paragraph 3 to access that information;
- (d) the terms and conditions, the arrangements and the required documentation under which trade repositories grant access to the entities referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2020.

In developing those draft regulatory technical standards, ESMA shall ensure that the publication of the information referred to paragraph 1 does not reveal the identity of any party to any contract.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

(23) in Article 82, paragraphs 2 to 6 are replaced by the following:

‘2. The delegation of power referred to in Articles 1(6), 4(3a), 64(7), Article 70, Articles 72(3), and 85(2) shall be conferred to the Commission for an indeterminate period of time.

3. The delegation of power referred to in Articles 1(6), 4(3a), 64(7), Article 70, Articles 72(3) and 85(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall endeavour to consult ESMA and shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 1(6), 4(3a), 64(7), Article 70, Articles 72(3) and 85(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.;

(24) Article 85 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. By 18 June 2024 the Commission shall assess the application of this Regulation and prepare a general report. The Commission shall submit that report to the European Parliament and to the Council, together with any appropriate proposals.;

(b) the following paragraph is inserted:

‘1a. By 17 June 2023 ESMA shall submit a report to the Commission on the following:

(a) the impact of Regulation (EU) 2019/834 of the European Parliament and of the Council (*) on the level of clearing by financial and non-financial counterparties and on the distribution of clearing within each type of counterparty, in particular with regard to financial counterparties that have a limited volume of activity in OTC derivatives and with regard to the appropriateness of the clearing thresholds referred to in Article 10(4);

(b) the impact of Regulation (EU) 2019/834 on the quality and accessibility of the data reported to trade repositories, as well as the quality of the information made available by trade repositories;

(c) the changes to the reporting framework, including the take-up and implementation of delegated reporting as laid down in Article 9(1a) and in particular its impact on the reporting burden for non-financial counterparties that are not subject to the clearing obligation;

- (d) the accessibility of clearing services, in particular whether the requirement to provide clearing services, directly or indirectly, under fair, reasonable, non-discriminatory and transparent commercial terms referred to in Article 4(3a) has been effective in facilitating access to clearing.

(*) Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories (OJ L 141, 28.5.2019, p. 42).;

- (c) paragraphs 2 and 3 are replaced by the following:

‘2. By 18 June 2020, and every 12 months thereafter until the final extension referred to in the third subparagraph, the Commission shall prepare a report assessing whether viable technical solutions have been developed for the transfer by pension scheme arrangements of cash and non-cash collateral as variation margins and the need for any measures to facilitate those viable technical solutions.

ESMA shall, by 18 December 2019, and every 12 months thereafter until the final extension referred to in the third subparagraph, in cooperation with EIOPA, EBA and the ESRB, submit a report to the Commission, assessing the following:

- (a) whether CCPs, clearing members and pension scheme arrangements have undertaken an appropriate effort and have developed viable technical solutions facilitating the participation of such arrangements in central clearing by posting cash and non-cash collateral as variation margins, including the implications of those solutions on market liquidity and procyclicality and their potential legal or other implications;
- (b) the volume and the nature of the activity of pension scheme arrangements in cleared and non-cleared OTC derivatives markets, within each asset class, and any related systemic risk to the financial system;
- (c) the consequences of pension scheme arrangements fulfilling the clearing requirement on their investment strategies, including any shift in their cash and non-cash asset allocation;
- (d) the implications of the clearing thresholds specified pursuant to point (b) of Article 10(4) for pension scheme arrangements;
- (e) the impact of other legal requirements on the cost differentials between cleared and non-cleared OTC derivative contracts, including margin requirements for non-cleared derivatives and the calculation of the leverage ratio in accordance with Regulation (EU) No 575/2013;
- (f) whether any further measures are necessary to facilitate a clearing solution for pension scheme arrangements.

The Commission may adopt a delegated act in accordance with Article 82 to extend the two-year period referred to in Article 89(1) twice, each time by one year, where it concludes that no viable technical solution has been developed and that the adverse effect of centrally clearing derivative contracts on the retirement benefits of future pensioners remains unchanged.

CCPs, clearing members and pension scheme arrangements shall make their best efforts to contribute to the development of viable technical solutions that facilitate the clearing of OTC derivative contracts by such arrangements.

The Commission shall set up an expert group composed of representatives of CCPs, clearing members, pension scheme arrangements and other relevant parties to such viable technical solutions to monitor their efforts and assess the progress made in the development of viable technical solutions that facilitate the clearing of OTC derivative contracts by pension scheme arrangements, including the transfer by such arrangements of cash and non-cash collateral as variation margins. That expert group shall meet at least every six months. The Commission shall consider the efforts made by CCPs, clearing members and pension scheme arrangements when drafting its report pursuant to the first subparagraph.

- 3. By 18 December 2020 the Commission shall prepare a report assessing:

- (a) whether the obligations to report transactions under Article 26 of Regulation (EU) No 600/2014 and under this Regulation create a duplicative transaction reporting obligation for non-OTC derivatives and whether reporting of non-OTC transactions could be reduced or simplified for all counterparties without undue loss of information;

- (b) the necessity and appropriateness of aligning the trading obligation for derivatives under Regulation (EU) No 600/2014 with changes made under Regulation (EU) 2019/834 to the clearing obligation for derivatives, in particular to the scope of the entities that are subject to the clearing obligation;
- (c) whether any trades that directly result from post-trade risk reduction services, including portfolio compression, should be exempted from the clearing obligation referred to in Article 4(1), taking into account the extent to which those services mitigate risk, in particular counterparty credit risk and operational risk, the potential for circumvention of the clearing obligation and the potential disincentive to central clearing.

The Commission shall submit the report referred to in the first subparagraph to the European Parliament and to the Council, together with any appropriate proposals.;

- (d) the following paragraph is inserted:

‘3a. By 18 May 2020, ESMA shall submit a report to the Commission. That report shall assess:

- (a) the consistency of the reporting requirements for non-OTC derivatives under Regulation (EU) No 600/2014 and under Article 9 of this Regulation, both in terms of the details of the derivative contracts that are to be reported and access to data by the relevant entities and whether those requirements should be aligned;
- (b) the feasibility of further simplifying the reporting chains for all counterparties, including for all indirect clients, taking into account the need for timely reporting and taking into account the measures adopted pursuant to Article 4(4) of this Regulation and Article 30(2) of Regulation (EU) No 600/2014;
- (c) the alignment of the trading obligation for derivatives under Regulation (EU) No 600/2014 with changes made under Regulation (EU) 2019/834 to the clearing obligation for derivatives, in particular to the scope of the entities that are subject to the clearing obligation;
- (d) in cooperation with the ESRB, whether any trades that directly result from post-trade risk reduction services, including portfolio compression, should be exempted from the clearing obligation referred to in Article 4(1); that report shall:
 - (i) investigate portfolio compression and other available non-price forming post-trade risk reduction services which reduce non-market risks in derivatives portfolios without changing the market risk of the portfolios, such as rebalancing transactions;
 - (ii) explain the purposes and functioning of such post-trade risk reduction services, the extent to which they mitigate risk, in particular counterparty credit risk and operational risk, and assess the need to clear such trades or to exempt them from clearing, in order to manage systemic risk; and
 - (iii) assess to what extent any exemption from the clearing obligation for such services discourages central clearing and may lead to counterparties circumventing the clearing obligation;
- (e) whether the list of financial instruments that are considered highly liquid with minimal market and credit risk, in accordance with Article 47, could be extended and whether that list could include one or more money market funds authorised in accordance with Regulation (EU) 2017/1131 of the European Parliament and of the Council (*).

(*) Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8).;

- (25) in Article 86, the following paragraph is added:

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

- (26) in Article 89(1), the first subparagraph is replaced by the following:

‘1. Until 18 June 2021, the clearing obligation set out in Article 4 shall not apply to OTC derivative contracts that are objectively measurable as reducing investment risks that directly relate to the financial solvency of pension scheme arrangements, and to entities established to provide compensation to members of such arrangements in case of default.

The clearing obligation set out in Article 4 shall not apply to OTC derivative contracts as referred to in the first subparagraph of this paragraph entered into by pension scheme arrangements from 17 August 2018 until 16 June 2019.;

(27) Annex I is amended in accordance with the Annex to this Regulation.

Article 2

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

It shall apply from the date of entry into force, except for the following:

- (a) provisions set out in points (10) and (11) of Article 1 of this Regulation, as regards Articles 38(6) and (7) and 39(11) of Regulation (EU) No 648/2012, shall apply from 18 December 2019;
- (b) provisions set out in point (7)(b) of Article 1 of this Regulation, as regards Article 9(1a) to (1d) of Regulation (EU) No 648/2012, shall apply from 18 June 2020;
- (c) provisions set out in points (2)(b) and (20) of Article 1 of this Regulation, as regards Articles 4(3a) and 78(9) and (10) of Regulation (EU) No 648/2012, shall apply from 18 June 2021.

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

Done at Brussels, 20 May 2019.

For the European Parliament
The President
A. TAJANI

For the Council
The President
G. CIAMBA

ANNEX

Annex I is amended as follows:

(1) in Section I, the following points are added:

- '(i) a trade repository infringes point (a) of Article 78(9) by not establishing adequate procedures for the effective reconciliation of data between trade repositories;
- (j) a trade repository infringes point (b) of Article 78(9) by not establishing adequate procedures to verify the completeness and correctness of the data reported;
- (k) a trade repository infringes point (c) of Article 78(9) by not establishing adequate policies for the orderly transfer of data to other trade repositories where requested by the counterparties and CCPs referred to in Article 9 or where otherwise necessary.;

(2) in Section IV, the following point is added:

- '(d) a trade repository infringes Article 55(4) by not notifying ESMA in due time of any material changes to the conditions for its registration.'
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