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## **NOTICE TO STAKEHOLDERS**

### **WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES RELEVANT FOR LANDING OF FISHERY PRODUCTS IN THE EU**

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## INTRODUCTION

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.<sup>1</sup> The Withdrawal Agreement<sup>2</sup> provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.<sup>3</sup>

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing notably for a free trade area. However, it is not certain whether such an agreement will be concluded and will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which, in terms of market access conditions, will be very different from the United Kingdom’s participation in the internal market,<sup>4</sup> in the EU Customs Union, and in the VAT and excise duty area.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation after the end of the transition period (Part A below). This notice also explains the rules applicable in Northern Ireland after the end of the transition period (Part B below).

### **Advice to stakeholders:**

To address the consequences set out in this notice, stakeholders involved in fishing activities, imports and landings of fishery products are in particular advised to assess whether landing practices should be adapted taking into account the new situation in order to keep their processes compliant.

### **Please note:**

This notice does not address:

- Conditions for access to waters; and
- EU rules on maritime safety, and related controls.

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<sup>1</sup> A third country is a country not member of the EU.

<sup>2</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

<sup>3</sup> Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

<sup>4</sup> In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

For these aspects, other notices are in preparation or have been published.<sup>5</sup>

## **A. LEGAL SITUATION AFTER THE END OF THE TRANSITION PERIOD**

After the end of the transition period, the Common Fisheries Policy rules will no longer apply to and in the United Kingdom. Furthermore, the United Kingdom will not be part of the EU Customs Union nor of the sanitary and phytosanitary (SPS) area of the EU.<sup>6</sup> This has in particular the following consequences:

### **1. REQUIREMENTS AND CONTROLS TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING**

After the end of the transition period, UK flagged fishing vessels will be third country fishing vessels for the purpose of Regulation (EC) No 1005/2008.<sup>7</sup> The following requirements will apply:

#### **1.1. Access of third country fishing vessels to ports in the EU for landing and transshipment operations and port services**

According to Articles 4 and 5 of Regulation (EC) No 1005/2008, third country fishing vessels<sup>8</sup> may only conduct landing or transshipment operations or get access to port services in ports designated by EU Member States. The list of designated ports is regularly published in the Official Journal.<sup>9</sup>

This is without prejudice to rules of international law of the sea applicable in cases of *force majeure* and distress.

#### **1.2. Prior notice and authorisation**

According to Article 6 of Regulation (EC) No 1005/2008, the competent authorities of the Member State whose designated port or landing facilities the Master/representative of the third country vessels wishes to use have to be notified at least three working days before the estimated time of arrival at the port.<sup>10</sup> Exemptions may apply.<sup>11</sup>

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<sup>5</sup> [https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period\\_en](https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en)

<sup>6</sup> Regarding the applicability of these rules to Northern Ireland, see Part B of this notice.

<sup>7</sup> Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ L 286, 29.10.2008, p. 1.

<sup>8</sup> For the definition of fishing vessels see Article 2(5) of Council Regulation (EC) No 1005/2008 of 29 September 2008

<sup>9</sup> The list of designated ports is available here: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0214\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0214(02)&from=EN)

<sup>10</sup> The Commission may shorten this period in accordance with Article 6(3) of Regulation (EC) No 1005/2008.

The prior notification shall be accompanied by a validated catch certificate (see below) if the third country fishing vessel carries on board fishery products.

According to Article 7(1) of Regulation (EC) No 1005/2008, authorisations to access the port are granted when prior notice condition has been met and catch certificates have been provided where required. Derogations and specific rules may apply.

### **1.3. Recording of landings**

According to Article 8(1) of Regulation (EC) No 1005/2008, prior to landing or transshipment operations, masters of third country fishing vessels or their representatives shall submit to the authorities of the Member State whose designated ports of landing or transshipment facilities they use a declaration containing information on the fishery products to be landed or transhipped.

### **1.4. Inspections in ports**

According to Article 9(1) of Regulation (EC) No 1005/2008, EU Member States shall carry out inspections in their designated ports of at least 5 % of landing and transshipment operations by third country fishing vessels each year. In accordance with Article 9(2) of Regulation (EC) No 1005/2008, certain fishing vessels shall be inspected in all cases.

According to Article 11(2) of Regulation (EC) No 1005/2008, if the results of the inspection provide evidence that a third country fishing vessel has engaged in unreported and unregulated fishing as set out in Article 3 of Regulation (EC) No 1005/2008, the competent authority of the port Member State must not authorise such vessels to land or tranship their catch. Other measures and sanctions may apply.

### **1.5. Catch certification for trading fishery products**

According to Article 12 of Regulation (EC) No 1005/2008, fishery products<sup>12</sup> may only be imported into the EU when accompanied by a catch certificate.

The catch certificate must be validated by the competent authority of the flag State. It must certify that the fishery products concerned have been obtained from fishing activities conducted in any waters in accordance with applicable laws, regulations and international conservation and management measures.

Simplified catch certificates are used for fishery products caught by certain categories of third country fishing vessels under specific circumstances.<sup>13</sup>

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<sup>11</sup> Article 6(3) of Regulation 1005/2008.

<sup>12</sup> Pursuant to Article 2(8) of Regulation 1005/2008, “fishery products” mean any products which fall under Chapter 03 and Tariff headings 1604 and 1605 of the Combined Nomenclature established by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, with the exception of the products listed in Annex I of this Regulation.

## **1.6. Port State Control requirements under the North-East Atlantic Fisheries Commission (NEAFC)**

In addition to the framework provided by Regulation (EC) No 1005/2008, specific provisions for the access and the use of ports by third country fishing vessels may apply.

Regulation (EU) No 1236/2010,<sup>14</sup> lays down a Port State Control Scheme applicable in the NEAFC area to vessels flying the flag of Contracting Parties.<sup>15</sup>

After the end of the transition period, and in case the United Kingdom becomes a Contracting Party to NEAFC, the following rules apply in particular:

- In accordance with Article 23 of Regulation (EU) No 1236/2010, landings and transshipments of fish frozen after being caught in the NEAFC Convention Area is allowed only in designated ports established in accordance with the NEAFC Convention.<sup>16</sup>
- In accordance with Article 24 of Regulation (EU) No 1236/2010, a master/his representative of a third country vessel carrying on board frozen fish products is to give a prior notification of three working days before the estimated time of arrival.
- In accordance with Article 26 of Regulation (EU) No 1236/2010, each Member State is to carry out inspections of at least 5 % of landings or transshipments of fresh fish and at least 7.5% of frozen fish in its ports during each reporting year.

## **2. CUSTOMS FORMALITIES<sup>17</sup>**

The Union Customs Code<sup>18</sup> distinguishes for the purpose of customs formalities in respect of products of sea-fishing and goods obtained from such products (“sea-

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<sup>13</sup> Article 6 of Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ L 280, 27.10.2009, p. 5.

<sup>14</sup> Regulation (EU) No 1236/2010 of the European Parliament and of the Council of 15 December 2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries, OJ L 348, 31.12.2010, p. 17.

<sup>15</sup> If the United Kingdom becomes a NEAFC Contracting Party, the NEAFC port control will also be applied to EU vessels landing or transshipping in UK ports fishery products from the NEAFC Convention area.

<sup>16</sup> <https://psc.neafc.org/designated-contacts>

<sup>17</sup> For certain specific cases of fish caught before the end of the transition period, and landed in the EU thereafter, please see the annex to this notice.

fishing products and goods”) between catches obtained in the territorial waters of a country and catches from high seas, including the exclusive economic zone of a country.

## **2.1. Fish caught by EU fishing vessels<sup>19</sup>**

After the end of the transition period, where sea-fishing products and goods caught by an EU fishing vessel outside the UK territorial sea in high seas, including within the UK exclusive economic zone, will be brought to the customs territory of the Union directly, transhipped to another vessel, or transhipped and transported through the United Kingdom, the presumption of having the customs status of Union goods will not apply to those products and goods<sup>20</sup>, unless a proof of that customs status is provided according to Articles 130, 131 and 133 of Delegated Regulation (EU) 2015/2446 and Articles 213 and 214 of Implementing Regulation (EU) 2015/2447.<sup>21</sup>

Where after the end of the transition period an EU fishing vessel catches sea-fishing products and goods in the UK territorial sea, the customs status will be that of non-Union goods when brought to the customs territory of the Union. When released for free circulation, subject to fulfilment of the conditions under Article 257 of Implementing Regulation (EU) 2015/2447, they shall be granted relief from import duty in accordance with Article 208(1) of the Union Customs Code.

In each of the cases above, there will be a waiver for those products and goods from the lodgement of the entry summary declaration (ENS).<sup>22</sup>

## **2.2. Fish caught by UK fishing vessels**

After the end of the transition period, the sea-fishing products and goods caught by a UK fishing vessel outside the customs territory of the Union, including in the exclusive economic zones of the EU Member States, and landed in the Union, will be treated as third-country goods, i.e. customs formalities will apply including the provision of ENS, the lodging of a customs declaration for those goods, and possibly payment of customs duties.

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<sup>18</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269, 10.10.2013, p. 1.

<sup>19</sup> For the purposes of the UCC legislation, an “EU fishing vessel” may mean a “Union factory ship” (Article 1(43) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343, 29.12.2015, p. 1. (“Delegated Regulation (EU) 2015/2446”) or a “Union fishing vessel” (Article 1(44) of Delegated Regulation (EU) 2015/2446).

<sup>20</sup> Article 119(1)(d) and (e) of Delegated Regulation (EU) 2015/2446.

<sup>21</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343, 29.12.2015, p. 558 (“Implementing Regulation (EU) 2015/2447”).

<sup>22</sup> Article 104(1)(n) of Delegated Regulation (EU) 2015/2446.

Where after the end of the transition period a UK fishing vessel catches sea-fishing products and goods in the territorial seas of the EU Member States, i.e. within the customs territory of the Union, the presumption of having the customs status of Union goods will not apply to those products and goods<sup>23</sup>, unless a proof of that customs status is provided in accordance with Article 132 of Delegated Regulation (EU) 2015/2446 and Article 215 of Implementing Regulation (EU) 2015/2447.

### 2.3. Summary - overview

		<b>Customs status of fish brought into EU</b>	<b>Customs formalities in EU</b>
EU fishing vessel	Fish caught in the UK territorial sea	Non-Union goods	ENS waiver Release for free circulation with relief from import duty
	Fish caught in high seas, including in the UK EEZ or in the EEZ of an EU MS	General presumption of the customs status of Union goods does not apply; a proof thereof is required	ENS waiver
	Fish caught in the territorial sea of an EU MS, i.e. in the customs territory of the Union	Union goods	n/a
UK fishing vessel	Fish caught outside the territorial sea of an EU MS, i.e. outside the customs territory of the Union	Non-Union goods	ENS, customs declaration and possibly customs duties required
	Fish caught in the territorial sea of an EU MS, i.e. in the customs territory of the Union	General presumption of the customs status of Union goods does not apply; a proof thereof is required	n/a

<sup>23</sup> Article 119(1)(f) of Delegated Regulation (EU) 2015/2446.

### 3. SANITARY REQUIREMENTS AND CONTROLS (“OFFICIAL CONTROLS”)

#### 3.1. General rules

##### 3.1.1. *Official controls on the production and placing on the market of fishery products*

According to Article 67 of Commission Implementing Regulation (EU) 2019/627<sup>24</sup>, official controls on the production and placing on the market of fishery products are to include:

- Regular checks on the hygiene conditions of landing and first sale;
- Regular inspections of vessels and establishments on land, including fish auctions and wholesale markets.

##### 3.1.2. *Site of official controls*

According to Article 68 of Commission Implementing Regulation (EU) 2019/627, the competent authorities are to carry out official controls on all vessels landing fishery products at EU ports, irrespective of flag, when they call at a port in a Member State.

Flag state competent authorities may perform official controls on vessels under their flag when the vessels are at sea, in a port in a Member State or in a third country.

#### 3.2. Fish caught by UK fishing vessels

##### 3.2.1. *Requirement for listing of third country*

According to Article 3 of Commission Delegated Regulation (EU) 2019/625,<sup>25</sup> the United Kingdom has to be “listed” by the EU in order for UK vessels to be allowed to land fish in the EU.

##### 3.2.2. *Requirement of listing of vessels*

Factory or freezer or reefer vessels under UK flag have to be listed by the EU in accordance with Article 10 of Commission Delegated Regulation (EU) 2019/625.

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<sup>24</sup> Commission Implementing Regulation (EU) 2019/627 of 15 March 2019 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls, OJ L 131, 17.5.2019, p. 51.

<sup>25</sup> Commission Delegated Regulation (EU) 2019/625 of 4 March 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption, OJ L 131, 17.5.2019, p. 18.

### 3.2.3. *Control upon landing*

According to Article 4 of Commission Delegated Regulation (EU) 2019/2126<sup>26</sup> fresh fishery products directly landed from a fishing vessel flying a third country flag are exempted from official controls at border control posts provided that they are performed by competent authorities in Union ports designated by Member States in accordance with Article 5(1) of Regulation (EC) No 1005/2008.

### **3.3. Official controls on fishery products caught by vessels flying the flag of Member States entering the Union after being transferred in third countries**

According to Article 72 of Commission Implementing Regulation (EU) 2019/627, fishery products caught by vessels flying the flag of a Member State and unloaded in third countries listed as provided for in Article 126(2)(a) of Regulation (EU) 2017/625<sup>27</sup> before entering the Union by a different means of transportation are to be accompanied by a health certificate issued by the competent authorities of that third country (model certificate in Chapter B of Part II to Annex III to Commission Implementing Regulation (EU) 2019/628<sup>28</sup>).

If these fishery products are stored in the third country or loaded in a vessel flying the flag of a third country, the storage facilities/vessel are to be listed as provided for in Article 5 of Commission Delegated Regulation (EU) 2019/625. However, this requirement does not apply to container vessels and to trucks in ferries.

## **B. RULES APPLICABLE IN NORTHERN IRELAND AFTER THE END OF THE TRANSITION PERIOD**

After the end of the transition period, the Protocol on Ireland/Northern Ireland (“IE/NI Protocol”) applies.<sup>29</sup> The IE/NI Protocol is subject to periodic consent of the

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<sup>26</sup> Commission Delegated Regulation (EU) 2019/2126 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for specific official controls for certain categories of animals and goods, measures to be taken following the performance of such controls and certain categories of animals and goods exempted from official controls at border control posts, OJ L 321, 12.12.2019, p. 104.

<sup>27</sup> Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (Official Controls Regulation), OJ L 95, 7.4.2017, p. 1.

<sup>28</sup> Commission Implementing Regulation (EU) 2019/628 of 8 April 2019 concerning model official certificates for certain animals and goods and amending Regulation (EC) No 2074/2005 and Implementing Regulation (EU) 2016/759 as regards these model certificates, OJ L 131, 17.5.2019, p. 101.

<sup>29</sup> Article 185 of the Withdrawal Agreement.

Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period.<sup>30</sup>

The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/NI Protocol, the EU and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State.<sup>31</sup>

The IE/NI Protocol provides that EU rules on illegal, unreported and unregulated fishing (IUU)<sup>32</sup> and Union customs legislation<sup>33</sup> apply to and in the United Kingdom in respect of Northern Ireland. As these rules distinguish based on the flag flown by a vessel, vessels flying the UK flag, including those registered in Northern Ireland, are third-country vessels for the purpose of this legislation.

More specifically, this means that the EU rules set out in Part A of this notice in regard of UK fishing vessels apply to all fish landed by those vessels in Northern Ireland as regards fisheries control, customs status and customs formalities and procedures.

The IE/NI Protocol also provides that EU sanitary rules<sup>34</sup> apply to and in the United Kingdom in respect of Northern Ireland. For the purpose of these rules, UK vessels with their port of registration in Northern Ireland are treated like vessels whose port of registration is in a Member State. UK vessels with their port of registration elsewhere in the UK, however, are treated like vessels registered in a third country.

More specifically, this means that the EU rules set out in Part A of this notice in regard of UK fishing vessels apply, as far as SPS controls are concerned, to all fish landed in Northern Ireland by UK vessels which do not have their port of registration in Northern Ireland.

European Commission  
Directorate-General for Maritime Affairs and Fisheries  
Directorate-General Taxation and Customs Union  
Directorate-General Health and Food Safety

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<sup>30</sup> Article 18 of the IE/NI Protocol.

<sup>31</sup> Article 7(1) of the Withdrawal Agreement in conjunction with Article 13(1) of the IE/NI Protocol.

<sup>32</sup> Article 5(4) of the IE/NI Protocol and section 46 of annex 2 to that Protocol.

<sup>33</sup> Article 5(3) of the IE/NI Protocol.

<sup>34</sup> Article 5(4) of the IE/NI Protocol and section 43 of annex 2 to that Protocol.

**ANNEX: RULES APPLICABLE WHERE FISH IS CAUGHT BEFORE THE END OF THE TRANSITION PERIOD, AND LANDED IN THE EU THEREAFTER**

1. Requirements and controls to prevent, deter and eliminate illegal, unreported and unregulated fishing

The rules set out in section A.1 of this notice apply to fish landed in the EU after the end of the transition period, no matter when it was caught.

2. Customs formalities applicable to sea-fishing products and goods caught by EU fishing vessels before the end of the transition period, and brought into the EU thereafter

Where an EU fishing vessel<sup>35</sup> catches sea-fishing products and goods in the UK territorial sea before the end of the transition period and lands those products and goods in a Union port, their customs treatment will depend on when that landing takes place:

- for landings before the end of the transition period, in general, no customs formalities will apply: where the vessel does not leave the customs territory of the Union from the place of catch to the Union port, the products and goods will be presumed to have the customs status of Union goods; where the vessel leaves that customs territory, a proof of the Union status should be provided for them.<sup>36</sup>

Please note that in the specific situation of the withdrawal of the United Kingdom and at the end of the transition period, customs may ask for a proof of status for those products and goods.

- for landings after the end of the transition period, the products and goods will keep the customs status of Union goods subject to a proof thereof.<sup>37</sup>

Where sea-fishing products and goods caught by an EU or a UK fishing vessel within or outside the territorial sea of the United Kingdom or of the Union are transhipped in the UK and their transport through the United Kingdom starts before the end of the transition period, and the products and goods are brought to the Union after the end of that period, Article 47 of the Withdrawal Agreement applies to that movement, subject to the fulfilment of the conditions set out therein. In practice, the carrier should be provided with a proof of customs status of Union goods for the respective products and goods.

3. Sanitary requirements and controls (“official controls”) applicable to sea-fishing products and goods caught by EU fishing vessels before the end of the transition period, and landed in the EU thereafter

The rules set out in section A.3 of this notice apply to fish landed in the EU after the end of the transition period, no matter when it was caught.

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<sup>35</sup> For the purposes of the UCC legislation, an “EU vessel” may mean a “Union factory ship” (Article 1(43) of Delegated Regulation (EU) 2015/2446) or a “Union fishing vessel” (Article 1(44) of Delegated Regulation (EU) 2015/2446).

<sup>36</sup> This applies equally to UK fishing vessels.

<sup>37</sup> Article 130 of Delegated Regulation (EU) 2015/2446 and Article 213 Implementing Regulation (EU) 2015/2447.