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Subject: Proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy
– Policy debate

Ministers had the following comments on the different questions:¹

- i. Which control instruments and means should be introduced or further developed to allow the development of an integrated and global approach to control? should there be any derogations for small-scale fisheries?*

All delegations expressed their concerns about the increase of the costs on the one hand and of the administrative burden on the other hand. Cost-effectiveness and proportionality should be the guiding principles. As regards possible derogations from the control rules, many delegations (DE, FI, NL, LV, SI, LT, IT, RO, BG, MT, EL) considered appropriate a derogation for small scale and coastal fisheries.

DE: it should not be compulsory to have VMS, AIS and VDS simultaneously, especially not for small vessels.

¹ The questions can be found in the Presidency Note (doc. 10626/09 PECHE 149).

UK: technology is important in order to improve enforcement and decrease the administrative burden. Supports electronic logbook, which should apply to all vessels. AIS should play a role under certain circumstances as an alternative tool to VMS. Does not support the extension of VMS to more vessels. VDS should be optional to allow MS decide to use it only when there is a benefit to it. Derogations may be appropriate under certain circumstances but must be justified.

PL: VMS should not be compulsory for vessels below 12 m which operate in coastal fisheries.

PT: important to leave scope for innovation and new technology but applying the cost-effectiveness and proportionality principles.

BE: supports the extension of VMS but VDS and AIS should remain optional.

LV: use existing mechanisms and tools and improve them. Adopt new control mechanisms only if they are justified and a transition period is provided before the need for implementation. They should be cost-effective and derogations for small vessels should apply.

SI: apply derogations to vessels that do not fish more than 24 hours or operate exclusively within territorial seas.

IE: does not support the proposals on AIS and VDS. Would like to see a greater focus on controls based on risk assessment. Concerned about measures such as the introduction of secondary licensing which is a particular problem in mixed whitefish fisheries in Western Waters. Does not support the extension of VMS and electronic logbook to small vessels.

LT: supports new technologies but these must be guided by the principles of economic efficiency, proportionality and derogation for small scale fisheries should apply.

FR: generally supports increased use of technologies. As regards VMS technical constraints of small vessels should be taken into account. Would like a general clause in the regulation to exempt small vessels from its scope. To offset the increase costs derived from implementing the regulation, COM should cooperate financially to bear investment as well as operational costs linked to new control means.

ES: essential to have simple control rules which can be strengthened if necessary for certain fisheries. Take into account small scale fisheries. Keep in mind that the electronic logbook is not yet into force and we are already modifying it. As regards the monitoring of engine power, COM should establish uniform procedures as to how to measure engine power before setting control rules in this regard.

IT: the introduction of any new control instrument should be based on a cost-effective analysis. Take into account major differences in zones and sizes of vessels.

CY: control provisions must take into account the specific characteristics of the Mediterranean and not be a purely transposition of the measures decided for the North Sea.

RO: new technological control means must be based on cost- effectiveness, transition periods and derogations for small scale fisheries. Take into account different fleets and regional specificities.

BG: exclude small scale vessels up to 15 m which operate exclusively in territorial waters. High technology control means should foresee derogations for small scale fisheries

EE: control must be based on risk analysis and cost-effective means. Take into account regional differences. Cross-check obligations should be extended to vessels under 10 m and to small scale vessels.

MT: Before introducing new technologies an assessment of their necessity and cost-effectiveness is necessary.

SE: cost-effectiveness, proportionality, simplification and risk analysis should be the guiding principles. Take account of regional differences and different fleets.

EL: incorporate new technologies in order to reduce the administrative burden and costs and to have the best possible results. Take account of the nature of the fleet and hours of operation.

ii. Should sanctions for infringements of CFP rules be further harmonized? If so, to what extent? Should a penalty point system be set up? If so, how?

As regards **harmonization of sanctions**, a number of delegations (DK, UK, PL, PT, SI, ES, IT, EE, MT) were opposed to go further than what was agreed in the IUU Regulation.

DE, FI, LV, PT, LT, FR, RO, BG, EE, MT, SE, UK, PL, NL did not support harmonization of sanctions since this is a MS competence. Different economic situations in different MS should be taken into account.

CY, IE supported greater harmonization of sanctions.

DE: sanctions should be effective, proportionate and dissuasive. It should be up to MS to decide on their level taking into account their national penal systems.

NL: in favour of harmonization as regards suspension of licences but not have minimum and maximum levels.

PT: sanctions must be effective, proportionate and dissuasive. A strong commitment from MS is necessary in order to deal with sanctions in an effective way. Harmonization at EU level is not needed since MS can act more efficiently in this regard.

EE: effective sanctions can be achieved by other means than harmonization such as by annulling or refusing a fishing permit if more than a serious infringement has been committed during a certain period of time.

As regards the **penalty point system**, the following comments were made:

DK, SI, CY, EL, IE: support the system in principle but the principle of proportionality should be safeguarded.

FI, RO, BE did not support it.

DK: the rules must be simple and enforceable. Wondered whether the future adoption of these rules could remove other currently applicable control rules.

DE: doubts about the possibility to introduce a real harmonised system.

FI: the cost of setting up this system is excessive compared to its benefits.

NL: could lead to heavy burden and double penalties.

LV: the justification and cost-effectiveness of the system is not clear.

LT: the system proposed is not clear, too complex. It should not be compulsory.

FR: the duration of the suspension must be progressive.

EL: the system must be reasonable and proportionate, excluding small vessels.

MT: not against the system in principle but feels more information is required together with specific rules in an implementation regulation.

IE: the proposal as it stands is vague in detail but supports the system provided it is fair and equitable and operated on a consistent basis through MS.

iii. As regards powers, to what extent, if any, should

- *the Commission be provided with more possibilities to intervene proportionately to the level of non-compliance with CFP rules;*
- *the powers of Community inspectors be redefined;*
- *the mandate of the Community Fisheries Control Agency be extended?*

As regards **COM powers**, a number of delegations (PT, DE, UK, BE, IE, EL, ES, IT, RO) pointed out that the competences and powers of different actors in the EU is clearly established in the Treaties and one should stick to them. Control of CFP should therefore remain mainly within MS competence.

SI: flexible on questions of powers.

EE: COM should be given more powers. However, proposed mechanisms for cases of non-compliance with multiannual plans should apply only to recovery plans

IE: was open to the possibilities of an enhanced role being played by COM with the proviso that the fundamental responsibility for the effective implementation of CFP rules remains with MS.

DK: Supports extension of COM power only in cases where MS fail to carry out proper control.

FI: COM possibilities to ensure compliance with CFP rules should be limited to justified cases of serious and repeated infringements with the aim of effective deterrence. At its current stage the regulation is vague as to in which cases COM may intervene.

NL: greater supervision by COM is necessary to offer sufficient guarantees of the respect of CFP rules.

PL: COM should focus on improving the current means of control.

PT: MS and EU must take their respective responsibilities on issues for which they are competent.

LV: increase of COM powers must be clearly justified.

LT: COM powers are enough at the moment and proved not very efficient in the past

FR: not increase COM powers but introduce measures that can speed up its capacity of reaction. Does not support the possibility for COM to refuse quota exchanges.

BG: extension of COM powers could only take place following an extensive analysis and in cases it is justified from an economically and legal point of view.

LV, FR, RO, MT: did not support the suspension of financial assistance for non compliance with CFP rules as foreseen in Art. 95 of the regulation. PL: suspension of financial assistance should only be used as a last resort tool. SI: the principle of proportionality must be respected. ES: concrete rules should be set down to avoid legal uncertainty. IT: suspension of aid has to be decided through stringent procedures and only in exceptional cases. This could lead to conflicts between COM and MS.

As to the **powers of Community inspectors**, the following comments were made:

FI, UK, RO: keep these powers unchanged

IE: the extension of the powers of Community inspectors needs to be examined in much greater detail.

NL, MT, SE: Community inspectors should not have police powers. MT: and should always be accompanied by national inspectors. NL: they should not be allowed to access private areas in cases where a judicial authorization is necessary.

IE, PL, FR, EE: Opposed to the proposal whereby MS could conduct inspections inside another MS' territorial waters or territories of other MS.

As regards a possible extension of the **mandate of the Control Agency**, the following comments were made:

FI, UK, FR, ES, RO, EE, MT: keep its mandate and coordination and assistance roles unchanged

NL: should have an enhanced coordinating role.

UK: happy to extend its mandate only in order to meet its current role.

UK, NL: have a clear distinction between COM and Agency roles

PL, LV: keep COM's important role in RFMOs waters where it ensures a centralized control.

BE: Agency's mandate should be consolidated before thinking of an extension.

LT: Agency must deal with control in waters beyond territorial waters. To this aim it should be provided with the necessary equipment and resources.

EL: mandate of the agency could be extended in order to support MS efforts when setting up their control systems

ES: extend the agency mandate could undermine the coordination role for which it was created.

IT, CY: given its very recent establishment any expansion of its mandate must be examined very carefully.

IE: the mandate or role of CFCA could be extended subject to the rights and responsibilities of MS.

iv. Other comments

Simplification

DK wondered how the large number of detailed rules in the proposal fit with the aim of simplification and the objectives of the CFP reform. One should focus on results based on risk analysis rather than on technical details. Control rules should be cost-effective and easy to understand.

NL: apply risk analysis.

EL: essential to have simple rules, easy to enforce.

CFP reform

FI: the key ideas in the Green paper on the CFP reform (subsidiarity, reduction of burden, regional specificities and special treatment for small scale fisheries), should be the guiding principles for the Control regulation, which is not the case at the moment

DK, NL, UK: this regulation should form an integral part of the CFP reform

FR: ensure compatibility between the Control regulation and CFP reform

Scope

DK, DE: The regulation should only incorporate rules that relate purely to control not to conservation measures. ES: management measures such as real time closures and measures to reduce discards should first be adopted before deciding on provisions to control them. These measures must be based on solid scientific advice and be specific to certain fisheries (not applied generally)

DE, PL, LV, RO: exclude from the scope of the proposal inland waters and freshwater aquaculture

Recreational fisheries

DK, DE, UK, FI, IE: the monitoring of recreational fisheries contains rules excessively bureaucratic which does not contribute to the aims of simplification and reduction of costs.

DE: MS should assess in more detail the impact of these fisheries to allow COM to prepare a report on this. On the basis of this report management measures could be deemed necessary.

PL, FR: improve control of recreational fisheries but not deduce these catches from commercial quotas. FR: the quota must be established on a case by case basis

Monitoring of marketing and traceability

DK: positive element of the proposal, traceability should be enhanced.

DE: provisions on traceability contain too tough requirements, specially for small amounts.

EE: not foresee any exemptions to ensure perfect traceability

BE: concern with the obligation of systematic landing for weighing before transferring catches on board of any other vessel or vehicle, since it would affect the quality of the products (break the cold chain)

Timing

UK, SE: Necessary to reach an early agreement on the proposal. SE: will make of this proposal a priority during its presidency.

FR: foreseen entry into force is unrealistic

IE, ES: proposal should only enter into force in 2011 rather than 2010 to allow reasonable time for MS to make the necessary preparations.

The Commission representative concluded by making the following points:

- waiting until the CFP reform was not advisable since the control regime is not functioning well. Strengthening the control rules is essential for the credibility of the whole CFP;
- COM was determined to find a solution as regards small scale fisheries and the application of the regulation to inland waters and freshwater aquaculture;
- ready to limit e-logbook and VMS to vessels over 12 m;
- as regards recreational fisheries, only recovery stocks on which these fisheries have a considerable impact would be affected (cod and bluefin tuna). Decisions on control of these fisheries would be based on scientific advice and taken on a case by case basis;
- as regards harmonization of sanctions and the penalty point system the aim is to bring about a level playing field. To this end COM would need more responsibilities (and not more powers). IUU regulation has a different scope than the control regulation and should only be a basis for discussions, not the final aim;

- according to experts the new rules would mean 50% less costs overall but aware that certain provisions could increase costs. COM ready to bear up to 95% of these and to look into this further in order to reduce costs to minimum possible;
 - in cases of small quantities committed to simplify traceability and recording requirements to reduce burden;
 - would show flexibility as to proposed possibility for Community inspectors to carry out inspections inside territorial waters of other MS;
 - would make an increase use of risk-analysis;
 - would leave MS room for manoeuvre as regards the assessment of the seriousness of sanctions and the implementation of the penalty point system;
 - COM should only have increased powers to intervene in cases of default by MS;
 - the main thrust of the regulation should enter into force in January 2010 to ensure coherence with the IUU Reg. but transition periods would be foreseen as regards sanctions and new technologies.
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