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Implementation and evaluation of Regulation (EC) 1224/2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy as required under Article 118

REFIT
Evaluation of the impact of the fisheries regulation
{SWD(2017) 134 final}

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1. INTRODUCTION

The success of the Common Fisheries Policy[1] (CFP) depends very much on the implementation of an effective control system. The measures provided for in Council Regulation (EC) No 1224/2009[2] establishing an EU-wide control system for ensuring compliance with rules of the CFP (*hereinafter 'the Control Regulation'*) seek to establish a Union system for control, inspection, and enforcement based on a global and integrated approach, in accordance with the principle of proportionality and administrative cost-efficiency.

This document responds to the legal obligation set in Article 118 of the Control Regulation which calls on the Commission to report to the European Parliament and the Council on the status of implementation of the Control Regulation in the Member States every five years (Article 118 (2)), and to evaluate its impacts on the CFP five years after its entry into force (Article 118 (3)).

The evaluation of the Control Regulation is also included in the Commission's Regulatory Fitness and Performance programme (REFIT)[3] and its aim was to assess whether the Regulation is fit for purpose by focusing on its simplification and regulatory burden reduction aspects.

The evaluation was carried out according to the five criteria of relevance, EU added value, coherence, effectiveness and efficiency set out in the Commission's Better Regulation Guidelines of May 2015[4]. An analysis of simplification and regulatory burden reduction aspects was also carried out as part of the evaluation.

In this context the main provisions of the Control Regulation have been assessed against the general objectives of promotion of level playing field and development of a culture of

[1] *Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy*, OJ L 354 28.12.2013 p.22.
[2] *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 L343 22.12.2009 p.1
[3] *Regulatory Fitness and Performance Programme (REFIT) State of Play and Outlook "REFIT Scoreboard*, SWD (2015) 110 final.
[4] *Better regulation guidelines* (Commission Staff Working Document), SWD (2015) 111

compliance with the CFP rules. In addition, the effectiveness of the instruments foreseen by the Control Regulation for the Commission to ensure the implementation of the CFP by Member States has also been examined. These were the areas that showed weaknesses and shortcomings in the previous control regime and that therefore have been specifically addressed through new instruments in the current Control Regulation.

In addition the evaluation of such a legal framework could not abstract from considering the policy environment it is related to. Besides the context and objectives set at the time of its adoption, the Control Regulation has been evaluated in light of the recent CFP reform, which introduced new objectives and legal obligations, as for instance the landing obligation. The evolution of the control aspects implemented by means of application of the IUU Regulation[5], the European Maritime and Fisheries Fund[6] (EMFF) for the period 2014-2020 (introducing, among others, new provisions on financial sanctions), the Regulation on Common Markets Organisation[7] (CMO), as well as on-going discussions on a Regulation on the sustainable management of external fishing fleets[8] and the EU's efforts to shape international ocean governance have also been taken into account. Finally, the evaluation considered the changes in institutional and political scenarios, especially the entry into force of the Lisbon Treaty and the establishment of a European Cooperation Function on Coast Guard[9].

The overview results presented in this document rely on an extensive consultation process with relevant stakeholders. More details on the consultations carried out, the data source and information used, the methodology followed and results obtained are provided in the accompany Staff Working Document 'REFIT: Evaluation of the impact of the fisheries control regulation'.

2. IMPLEMENTATION - STATE OF PLAY

Based on data reported by Member States according to article 118 of the Control Regulation and on Commission observations derived from audits, verifications and inspections carried out according to Title X of the Control Regulation the Commission considers that Member States have implemented the main obligations of the Control Regulation and have set up the necessary instruments, procedures and standards for ensuring monitoring and inspection of fishing activities throughout the EU. They have established modern and efficient Fishing Monitoring Centres which, together with risk-based control strategies and national control programmes, have improved the surveillance and tracking of fishing vessels in EU and international waters, as well as the collection and transmission of reliable data. Vessel

[5] *Council Regulation (EC) No 1005/2008 establishing an Union system to prevent, deter and eliminate illegal, unreported and unregulated fishing*, OJ L 286 29.10.2008 p.1.

[6] *Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund*, OJ L 149 20.05.2014 p.1.

[7] *Regulation (EU) 1379/2013 on the Common Organisation of the Markets of Fishery and Aquaculture Products,* OJ L 354 28.12.2013 p.1.

[8] *Proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008,* SWD/2015/636 final - 2015/0289 (COD).

[9] *Regulation (EU) 2016/1626 of the European Parliament and of the Council amending Council Regulation (EC) No 768/2005 establishing a Community Fisheries Control Agency* OJ L 251 16.9.2016 p. 80.

Monitoring Systems (VMS) and Electronic Reporting Systems (ERS) are used throughout the fishing fleets for vessels above 12 meters, improving monitoring, control and reliability of catch data. The fishing capacity at EU level decreased according to the set objectives, the quality of catch data improved compared to the previous regime and there is a general recognised better compliance with CFP rules, both from operators and Member States.

While many positive elements have emerged in the five -years period examined, the analysis also highlighted both shortcomings in the implementation and deficiencies in some of the provisions of the Control Regulation, mainly concerning sanctions and point system, follow up of infringements, data exchange and sharing between Member States, traceability, control of weighing practices, and monitoring and catch reporting tools for vessels below 12 meters.

3. RESULTS OF THE EVALUATION

The evaluation confirms the relevance and the EU added value of the Control Regulation, which proves to be a valid instrument providing for a consistent framework for control, inspection and enforcement to ensure compliance with the CFP. It is also considered critical in establishing a level playing field among operators.

The Control Regulation simplified and rationalised the previous control system. Despite the existence of other parallel instruments containing control measures (*e.g.* the Fishing Authorisation Regulation[10], the Technical Measures[11] and the Mediterranean Regulation[12]), no particular issues have been identified in their simultaneous implementation. The Control Regulation is also coherent with other fishery legislations and acts (*e.g.* with the CMO Regulation and the EMFF). It aligned the EU with its international obligations in the control area, in particular allowing for a non-discriminatory implementation of the IUU Regulation in relation to third countries. The coherence with other EU policies, such as environment, maritime, innovation (blue growth), sanitary, customs and trade policies, is also not disputed. In spite of this consistency there are however concerns among stakeholders on the current provisions for the control of some of the new obligations set in the CFP, as for instance the landing obligation. Also shortcomings related to traceability might hinder the effective implementation of the CMO. In addition the instruments of the Control Regulation lack of

[10] *Council Regulation (EC) No 1006/2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters,* OJ L 286 29.10.2008 p.33.

[11] *Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms,* OJ L 125 27.04.1998 p.1.

[12] *Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea,* OJ L 409 30.12.2006 p.11.

synergies for an effective and efficient implementation of the Marine Strategy Framework Directive[13] and of the newly created European Cooperation function on Coast Guard.

As far as effectiveness and efficiency are concerned, the implementation of the VMS, the ERS and the use of risk-based control strategies proved to be essential tools to monitor activities and to increase the quality of reported catch data. It has also been acknowledged that the use of electronic fisheries information systems and standard control procedures reduced the administrative burden on operators, as well as on public authorities (more details are presented in the next section 'Simplification and reduction of Administrative Burden'). Yet, the complexity of some rules and the new approach compared to the previous regime led to delays in the implementation. Given that the entry into force of a series of provisions was also spread over three years since 2010, in certain areas the extent of benefits is only materialising now and it is only in the long term that the advantages will be fully apparent. It should be however noted that if some delays in implementation are due to the time necessary for technical developments (*e.g.* to implement new technologies and IT systems) or to the transposition into national law, some stakeholders also refer to a lack of political will to ensure timely implementation and Member States systematically highlighted shortage in human resources.

Lack of clarity in some of the provisions, obsolete provisions and discretional implementation across Member States (*e. g.* derogations, sanctions) also hamper the effectiveness and efficiency of this legal instrument.

Level Playing Field

All stakeholders stated that having a uniform, harmonised and global fisheries control system at EU level shall be a priority in the Union fishery policy. Ensuring a level playing field in the control area among Member States, among fisheries, among EU fleets fishing in or outside EU waters and among both EU and non-EU fleets fishing in EU waters is one of the pillars for an effective functioning of the CFP. While a lot has been achieved thanks to the new control regime, there is still room for improvement and further commitment is required from Member States to ensure a coherent and uniform application of the Regulation for operators at EU level.

The analysis confirmed that the development of EU standards, of a harmonised approach towards control activities and of shared IT platforms for data exchange are essential tools for achieving a solid level playing field. It was acknowledged that the role played by the European Fisheries Control Agency (EFCA) and by the European Commission in developing and enhancing a harmonised and coherent approach, with compatible systems for reporting, exchange of data, and traceability of fishery products is in this regard fundamental.

The traceability of fishery products across Member States is a concern. Even though a significant improvement has been observed across Member States and while post landing control increased the reliability and quality of data there are still issues with control at first

[13] *Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive),* OJ L 164, 25.6.2008, p. 19

sales and during transport. Key problems are due to loss of traceability in those two steps of the production chain, where consignments might be put on the market without preliminary control of their origin. Control authorities consider that the current framework for the control of weighing and transport is giving room for misreporting, while weighing provisions tend to transfer the control from the flag state to the coastal state. The experience has shown that transport is the ideal vehicle for misreporting catch data. Also the paper based traceability system mandated by the Control Regulation is not considered effective. As a result, some Member States are developing on a voluntary basis electronic traceability systems, but the different approaches taken at national level hinder data exchange, cross checks and validation. On the other hand, it should be noted that in some cases difficulties in data exchange are attributed to reluctance in data sharing, including between the Member States, the Commission and EFCA.

Claims of confidentiality, raised in several cases, could be also a serious obstacle to the implementation of other related policies (*e.g.* cooperation on coast guard functions). Moreover there are still unresolved issues concerning the use of scientific data for control purposes and of control data for management purposes, which need to be tackled for an effective achievement of the CFP objectives. The analysis clearly showed that some of the provisions of the Control Regulation on data and information gathering and exchange are not sufficiently clear.

The specific rules applying to vessels less than 12 meters are considered not fully suitable: while exemptions and derogations are perceived by operators of bigger vessels as lack of control and hampering the level playing field, the rigidity of some provisions imposed are perceived by the small scale fisheries as an unjustified burden, especially for the sectors which strongly suffered from the recent economic crisis.

The control of the activities of vessels below 10 meters, which are currently exempt from keeping a logbook, is not properly implemented by the Member States (*e.g.* control by sampling at the time of landing). In the Mediterranean Sea, where more than 80% of the vessels are small this is a topic that the current Control Regulation does not appropriately address. Similar difficulties are met in other sea basins, even though to a lesser extent.

Lack of control provisions relating to recreational fisheries is also felt as hindering the level playing field and considered necessary by citizens and the majority of relevant stakeholders.

Many stakeholders expressed their concerns with regard to the control of the landing obligation. Operators are especially concerned about the level playing field and seek limitation of any additional burden. It should be noted that while the text of the Control Regulation has been aligned with the new CFP through the so called Omnibus Regulation[14], it is perceived that the provisions for controlling the landing obligation are not adequate and that the control of new obligations (*e.g.* control of the use of catches of species below the minimum conservation reference size and not for direct human consumption) should be more

[14] *Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015 amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, and Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation (EC) No 1434/98,* OJ L 133 29.05.2015 p.1.

adequately addressed to avoid any confusion and doubts for many public and private stakeholders.

The evaluation also showed that roles and responsibilities of the Commission, EFCA and Member States are, for some tasks, not clear, bringing to duplication of similar activities.

Industrial operators and fishermen voiced concerns about the rigidity of some technical provisions that were found difficult to implement (*e.g.* weighing practices, tolerances, transport, prior notification, transmission deadlines of sales notes).

Culture of Compliance

An important cornerstone of the Control Policy is to raise awareness among all players involved in the full range of activities related to fisheries (catching, processing, distribution and marketing) on the importance of compliance with the CFP rules. The evaluation shows that the current framework contributed to building up a culture of compliance among operators and Member States, which in turn resulted in an improved compliance with the CFP obligations. However, it is also clear that it is still necessary to strengthen compliance with the CFP rules through a comprehensive and robust monitoring and control system and to raise awareness of industry on the importance of respecting conservation measures.

The Specific Control and Inspection Programmes and the Joint Deployment Plans implemented under the coordination of EFCA are efficient tools, and were found also to be excellent for improving cooperation and exchange of information among Member States. The divulgation activities and trainings carried out by EFCA have also been extremely valuable in explaining the new applicable rules and raise awareness among operators on conservation issues.

The evaluation shows that a culture of compliance strongly relies on a fair and uniform application of the control rules across fisheries and Member States, including third country vessels fishing in EU waters, and on a strict and consistent follow-up of detected infringements. The effective implementation of the sanctioning system, including point system for serious infringements are recognised pillars to ensure equal treatment of fishermen. However, while the Control Regulation provides for what is considered to be an adequate legal framework in line with the Treaty, national systems and their application vary considerably across Member States. The current point system for serious infringements is not applied by Member States with even criteria[15]. Cooperation among Member States is absolutely necessary for a fair treatment of fishermen, which allows gaining their trust and respect of the rules. In addition, the implementation of adequate sanctions in case of infringements in a consistent and even manner is essential to ensure their deterrent effects, besides contributing to the fulfilment of the EU's international obligations.

[15] Member States shall apply a point system for serious infringements as referred to in Article 42(1)(a) of Regulation (EC)No 1005/2008 on the basis of which the holder of a fishing licence is assigned the appropriate number of points as a result of an infringement of the rules of the common fisheries policy.
The gravity of the infringement in question is determined by the competent authority of the Member State, taking into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition.

Instruments of the Commission to ensure the implementation of Common Fisheries Policy by Member States

The new instruments set by the Control Regulation to ensure implementation of the CFP by Member States are in general well received by stakeholders. The increased powers of the European Commission in verifying Member States' control activities, performing audits and carrying out autonomous inspections also increased the compliance attitude of Member States with the CFP rules.

The action plans established by the Commission in cooperation with Member States concerned to address identified systemic deficiencies in their control system have proved to be effective cooperative tools.

Simplification and reduction of Administrative Burden

The Control Regulation has streamlined and rationalised the previous control regulatory system, simplified the communication among players and reduced the administrative burden.

The Control Regulation however remains complex and a number of provisions require legal clarification. In addition, as some obligations can be interpreted and thus applied very differently by Member States, the Commission is often requested to provide guidance to avoid multiple interpretations.

The use of modern technologies and the development of electronic fisheries information systems and data sharing were supposed, in the long term, to reduce the administrative burden. This still did not fully concretise as the development of those systems took time and in some cases electronic platforms are still under development. Nevertheless, when compared to the previous control system, there has been an estimated net reduction of 28% of administrative burden for operators. It is recognised that most of the benefits and cost reductions have been and will be gained by the public authorities, although the information available did not allow quantifying them[16].

The analysis shows that the Control Regulation has potential for further decreasing administrative burden, for instance by promoting the use of IT tools.

4. CONCLUSIONS

The Control Regulation is essential for ensuring respect of the CFP rules. This legal instrument is considered one of the main tools to achieve the CFP objectives, and ensure that conservation and management measures are enforced. Its principles and provisions tackle issues that have in the past led to extensive overfishing and poor compliance.

[16] It should be noted that while nowadays administrative burden refers to both operators and public authorities, in 2008, at the time of the impact assessment, only the administrative burden for operators was assessed. In absence of a baseline, it was therefore not possible to quantify the net reduction of administrative burden for the competent authorities.

Member States have generally implemented the main provisions of the Control Regulation and there are no doubts that, after six years, this legal framework is well accepted by relevant stakeholders. Due to the complexity of the rules and the time needed for adaptation, implementation of some of the provisions is however in some cases delayed.

The evaluation confirmed that, while it is indisputable that the Control Regulation contributed to improve the fisheries control system and to step up compliance with the CFP, the current legislative framework is not entirely fit for purpose. There is a strong call from stakeholders to better adapt the control system to the new CFP, addressing in particular the landing obligation, increase synergies with other policies, notably environment and market.

Furthermore lack of clarity of some of the provisions were one of the factors that resulted in sometimes different implementation approaches at Member State level, hindering the level playing field among operators and therefore their trust in the system. In addition, the obsolescence of some of the provisions, the lack of flexibility as well as sometimes ineffective implementation by Member States hamper the effectiveness and efficiency of the current legal regime. In this regard provisions on sanctions and point system, follow up of infringements, data exchange and data sharing, traceability, monitoring and catch reporting tools for vessels below 12 meters require particular attention.

5. WAY FORWARD

The contributions to this report from Member States and other stakeholders highlight a number of key challenges that the EU and its Member States need to address for assuring a coherent, effective and efficient system of control of fisheries conservation and management measures and respect of CFP rules. These also include improving the overall performance of the Control Regulation, aiming at securing sustainable fisheries while at the same time improving synergies with other policies.

The Commission will present the result of the evaluation to Member States and relevant stakeholders for discussion of effective solutions.