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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control - Final compromise text with a view to agreement

I. INTRODUCTION

1. On 30 May 2018, the Commission submitted the abovementioned proposal to the European Parliament and the Council.¹
2. The Commission proposal aims to amend various regulations that together define the Union's fisheries control system, in particular: (1) the regulation on the Union control system for fisheries of 2009 ("Control Regulation")²; (2) the regulation on illegal, unreported and unregulated fishing of 2008 ("IUU Regulation")³; and (3) the regulation on the European

¹ doc. 9317/18 + ADD 1-3.

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 (OJ L 343, 22.12.2009, p.1).

³ 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).

Fisheries Control Agency (EFCA) of 2019 (“EFCA Regulation”)⁴. Most amendments relate to the revision of the Control Regulation.⁵

3. The European Economic and Social Committee delivered its opinion on 12 December 2018.⁶ The European Committee of the Regions decided on 1 October 2018 not to issue an opinion.
4. The European Parliament adopted amendments to the Commission proposal on 11 March 2021 and referred the matter back to the PECH Committee for inter-institutional negotiations.⁷ Ms Clara Aguilera (ES, S&D) was appointed as Rapporteur.
5. Following intensive preparatory work, in particular, by the Croatian, German and Portuguese Presidencies, the Council agreed on a General Approach on 28 June 2021.⁸
6. Inter-institutional negotiations started in July 2021. During the Slovenian, French, Czech and Swedish Presidencies, a high number of inter-institutional technical meetings and 12 political trilogues were held. The Presidencies negotiated on the basis of the General Approach and six revised mandates consecutively approved by Coreper⁹. At the last trilogue, held on 30 May 2023, a provisional agreement was reached between the co-legislators, resulting in the final compromise text as set out in document 10499/23.

⁴ 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). The Commission proposal refers to the predecessor of that regulation of 2005, which was replaced in 2019 (Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency (OJ L 128, 21.5.2005, p. 1).

⁵ Fewer amendments are proposed for Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 409, 30.12.2006, p. 11) and Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks (OJ L 191, 15.7.2016, p. 1).

⁶ doc. 9492/19.

⁷ Amendments adopted by the European Parliament on 11 March 2021 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control (COM(2018)0368 – C8-0238/2018 – 2018/0193(COD)), P9_TA(2021)0076. doc. 9390/2/21 REV2 + ADD 1-2.

⁹ docs. 14237/21, 10027/22, 12919/22, 14435/22, 6640/23 and 9430/1/23.

II. MAIN ELEMENTS OF THE FINAL COMPROMISE TEXT

7. On the main political issues, the compromise text provisionally agreed with the European Parliament consists of the following elements¹⁰:

a) On fishing authorisations (Articles 7 and 7a)

- i) The Control Regulation will set out rules on fishing authorisations for Union catching vessels, including vessels obliged to use a remote electronic monitoring (REM) system, and, in a separate article, on fishing authorisations for other fishing vessels.
- ii) Implementing powers are granted to the Commission to set out detailed rules on fishing authorisations, including conditions for validity and conditions on access to data from REM systems.
- iii) The possibility for Member States to exempt certain vessels under 10 metres' length overall from the obligation to have a fishing authorisation and detailed conditions therefore will be set out in the Control Regulation itself rather than in an implementing act.

b) On vessel monitoring systems (VMS, Article 9)

- i) Member States will be obliged to monitor the position and movement of all fishing vessels flying their flag and of fishing vessels in their waters, irrespective of the vessel length. Vessels under 12 metres' length overall will be allowed to use mobile tracking devices rather than such installed aboard.
- ii) Upon the request of one or more Member States, the Commission will develop a VMS system at Union level for vessels under 12 metres' length overall.
- iii) Until the end of 2029, Member States will be able to exempt fishing vessels below 9 metres' length from tracking obligations, if certain conditions are met, including that they are not subject to restrictions applicable in fishing restricted areas and that the vessels never spend more than 24 hours at sea.

¹⁰ In this note, when reference is made to a specific article, it is a reference to an article of the Control Regulation, as set out in doc. 10499/23. When reference is made to a specific article of another regulation being amended or the amending regulation itself, this is explicitly indicated. The numbering of the articles might change during lawyer linguist revision and therefore be different in the final version to be adopted later on.

c) On remote electronic monitoring (REM, Article 13)

- i) The Regulation introduces the obligation to have installed on board an operating REM system, including CCTV, for Union vessels of 18m length overall or more which pose a high risk of non-compliance with the rules on the landing obligation.
- ii) The Commission is given implementing powers to determine the fleet segments of vessels to which this obligation applies, based on a risk assessment, and to set out detailed rules on technical features and functioning of REM, as well as on the use of data from this system.
- iii) Special safeguards are set out for the protection of personal data, including that recorded video material shall only concern certain parts of the vessel.

d) On the digitalisation of the reporting of catches and related information (in particular, Articles 14 to 15a, 17, 19 to 24, 62, 64 to 66 and 68)

- i) Masters of all catching vessels will be required to electronically record fishing activities irrespective of the vessel length, including catches and other relevant information, and to submit the fishing logbook, prior notifications¹¹, transshipment declarations and landing declarations via electronic means. As regards certain entries into the logbook and the time of its submission, the Control Regulation will set out specific rules adapted to smaller vessels.
- ii) To facilitate the shift to electronic systems, the Control Regulation will provide that, upon the request of one or more Member States, the Commission will develop a system for electronic logbooks at Union level. The system shall also allow the electronic submission of other documents, like the transshipment declaration, as well as to comply with VMS-related obligations.
- iii) The obligation to record and/or submit by electronic means information on fishery products will also apply to registered buyers, registered auctions or producer organisations in the case of sales notes, to operators responsible for the storage of fishery products in the case of take-over declarations, and to transporters in the case of transport documents.
- iv) Sales notes will not be required when consumers acquire fishery products not exceeding 10kg or two individuals of *Salmo salar* caught in the Baltic Sea, per day for private consumption.

¹¹ Rules on prior notifications for landing within the Union continue to only apply to vessels of 12 metres' length overall or more as under current rules.

e) On the margin of tolerance (MOT, Article 14(3) to 14(3c))

- i) The general margin of tolerance in estimates recorded in the fishing logbook of fish retained on board will remain 10% per each species.
- ii) For species not exceeding 100kg, the margin of tolerance will be 20% per each species.
- iii) Specific rules on a more favourable margin of tolerance in the case of small pelagic fisheries, fisheries for industrial purposes and tropical tuna purse seine fisheries will apply in so-called listed ports: the margin of tolerance will be set at 10% of the total quantity recorded in the logbook, per each species, and, for species representing less than 2% of all species landed, it will be set at 200kg or 0,5% of the total quantity, per each species. An overall limit of error of 10% of the total quantity of the catch landed will in any case apply. In case of landings elsewhere than in listed ports, a margin of 200 kg or 20%, whatever is greater, will apply to species under 2% of all species landed. The Commission will, through implementing acts, lay down rules on conditions related to the landing and weighing in listed ports, and approve the ports which are complying with them.

f) On the continuous monitoring of engine power (Article 39a)

- i) Member States will, on the basis of a risk assessment, have to determine which vessels, equipped with engines over 221 kilowatts and using towed gear, pose a high risk of non-compliance with the rules of the common fisheries policy (CFP) concerning engine power. For those vessels, Member States will have to ensure that they are equipped with devices that continuously monitor the engine power.
- ii) Certain smaller catching vessels fishing with certain gears in one particular area will in any case have to be equipped with such devices.

g) On fishing without a vessel (Article 54d)

- i) The Regulation introduces an obligation for Member States to put in place a licencing or alternative registration system for fishers without a vessel and to ensure that catches by those fishers are recorded.
- ii) Rules on the recording of catches and fishing effort (Article 33), traceability (Article 58), sales notes (Article 64), take-over declarations (Article 66), transport documents (Article 69) will apply to products caught without a vessel.

h) Recreational fisheries (Article 55)

- i) The Regulation introduces major amendments to control of recreational fisheries. Coastal Member States will need to ensure that natural persons engaged in recreational fisheries catching certain species are registered and that they record and report their catches through an electronic system.
- ii) In the case of species or stocks that are subject to Union conservation measures that apply specifically to recreational fisheries, this obligation applies two years after the entry into force. For species or stocks for which fishing opportunities are set by the Union, which are covered by a multiannual plan or which are subject to the landing obligation, and for which scientific advice indicates that recreational fishing has a significant impact on fishing mortality, it will start to apply as of 2030.
- iii) The scientific advice will need to be provided by STECF¹², ICES¹³ or an equivalent scientific body. The Commission will be granted implementing powers to adopt the list of species to which the obligation applies as well as to set the frequency of the recording and reporting of those catches.

i) Traceability of fishery and aquaculture products (Article 58)

- i) Traceability information for fresh fishery and aquaculture products, including Union and imported products, will have to be sent and received by operators in a digital way.
- ii) Regarding traceability requirements for processed fishery and aquaculture products, the basic traceability rules already applicable today will continue to apply. Delegated acts will set out detailed rules concerning the traceability requirements, including the use of digital systems, on the basis of the outcome of a Commission's study on feasible traceability systems. Those detailed rules shall only apply from five years after the entry into force of the regulation. The study to be conducted by the Commission will have to include an analysis of available digital solutions or methods, while taking into account the impact on small operators.

j) Enforcement, infringements and sanctions (Articles 82-93 and Annexes III and IV)

- i) In order to harmonise sanctioning across the Union, a list of serious infringements *per se* and a list of common criteria for other serious infringements will be included in the Control Regulation (Article 90, Annex IV).

¹² Scientific, Technical and Economic Committee for Fisheries.

¹³ International Council for the Exploration of the Sea.

- ii) The Commission will be able to amend criteria in Annex IV via delegated acts, without adding new ones, where there are clear indications that this is necessary to ensure effective and proportionate enforcement of the rules of the CFP by and across Member States.
 - iii) Minimum levels of administrative financial penalties are set out for serious infringements of the CFP rules and cases of recidivism. Member States may set out standards rates for administrative financial penalties instead of minimum administrative penalties. Alternative or in addition to administrative financial penalties, Member States may use criminal sanctions having an equivalent effect. In all cases, mitigating circumstances may apply.
 - iv) In addition to the current point system for holders of a fishing licence, Member States will also apply a point system for masters based on common rules.
- k) Amendments to the IUU Regulation
- i) A digital system (“CATCH”) will be introduced in the context of the catch certification scheme for IUU fishing and the catch certificates and other related documents will be managed in a single, EU-wide digital environment.
 - ii) Importers of fishery products imported into the EU will also need to submit catch certificates via CATCH.
- l) Amendments to the EFCA Regulation (Articles 3 and 33 of the EFCA Regulation)
- i) The mission of EFCA will be updated and refer to the development of pilot projects and cooperation with other Union agencies.
 - ii) The Administrative Board of EFCA will also include one representative of the European Parliament, next to one representative of each Member State and six representatives from the Commission.
- m) Entry into force/date of application and transitional provisions (Articles 6 and 7 of the amending regulation)
- i) The general date of application of the new rules will be 24 months after entry into force of the amending regulation. New provisions that do not or hardly require any specific actions will apply as of entry into force, including rules on fisheries monitoring centres. Rules that require major adjustments and investments, in particular, rules on fishing without a vessel, REM and engine power, will apply from four years after entry into force of the amending regulation. Additional specific dates of application are set for certain cases, like national control programmes.

- ii) A set of transitional rules should allow a smooth shift from currently applicable provisions to such under the amended regulation.

III. CONCLUSIONS

- 8. The Permanent Representatives Committee is invited to:
 - a) confirm the agreement on the final compromise text as set out in document 10499/23, in view of reaching an agreement at first reading with the European Parliament;
 - b) authorise the Presidency to inform the European Parliament that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in document 10499/23 (subject to revision by the legal linguists of both institutions), the Council will, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position at first reading and the act shall be adopted in the wording which corresponds to the European Parliament's position;
 - c) take note of the statements set out in the addendum to this note.