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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

- Preparation of the trilogue

1. INTRODUCTION

1. On 30 May 2018, the Commission submitted the abovementioned proposal to the European Parliament and the Council.¹ The proposal was presented to the Agriculture and Fisheries Council on 18 June 2018.
2. The Union fisheries control system is mainly set out in three regulations: (1) on the Union control system for fisheries of 2009 ("control regulation")²; (2) on illegal, unreported and unregulated fishing of 2008 ("IUU regulation")³; and (3) on the European Fisheries Control Agency (EFCA) of 2019 ("EFCA regulation")⁴. Some other regulations contain additional

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).

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).

specific rules relating to fisheries control.⁵

3. The Commission proposal amending these regulations envisages the first major revision of the Union fisheries control system since its last reform in 2009. Most amendments relate to the revision of the control regulation. A key objective of the reform is the creation of a more effective and efficient fisheries control system through improved, simplified and modernised rules, procedures and instruments.
4. The European Economic and Social Committee delivered its opinion on 12 December 2018⁶. The European Committee of the Regions decided on 1 October 2018 not to issue an opinion.
5. 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 negotiations⁷.
6. The Croatian, German and Portuguese Presidencies worked towards a General Approach, which was adopted, during the Portuguese Presidency, on 28 June 2021.⁸ All Member States supported the General Approach, except for Poland, which objected to the text, and Finland, which abstained.

II. INTERINSTITUTIONAL NEGOTIATIONS

7. Inter-institutional negotiations started in July 2021. The institutions agreed to divide the Commission proposal into 19 thematic ‘sequences’ (see Annex 1).
8. During the Slovenian Presidency, 12 inter-institutional technical meetings and four political trilogues were held. The institutions examined sequences 1, 2, 3, 5, a part of sequence 6, and

⁵ For example, 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.

⁸ doc. 9390/2/21 REV2 + ADD 1-2.

held a first exchange of views on sequence 4. On 1 December 2021, Coreper approved a revised mandate presented by the Slovenian Presidency which covered sequences 1 to 6⁹.

9. During the French Presidency, 25 technical meetings and three political trilogues took place. Discussions focused on a few open issues of sequences 1 and 3 and on sequences 4, 6, 7, 8, 9 and 15. On 17 June 2022, Coreper approved a revised mandate presented by the French Presidency which covered the afore-mentioned sequences¹⁰.
10. During the Czech Presidency, 9 technical meetings and one trilogue have taken place so far. Discussions focused on remaining rows from sequence 9, except for exemptions from the obligation to use VMS, and sequences 10, 13, 17 and 18. The co-legislators agreed to negotiate the topic of VMS-exemptions at a later point in time. The Presidency debriefed Coreper on the outcome of the trilogue on 20 July 2022.

III. PREPARATION OF THE NEXT TRILOGUE

11. To prepare the trilogue of 13 October 2022, on 22 September 2022 the Presidency presented to the Working Party on Fisheries Policy its suggested revised mandate on the remaining rows from sequence 9, except for exemptions from the obligation to use VMS, as well as on sequence 10¹¹. At the Working Party of 29 September 2022, the Presidency presented a slightly revised version of the suggested mandate¹², taking into account oral and written comments of delegations. In the same Working Party, it also presented a proposal for a revised mandate on sequences 17 and 18¹³. A large number of delegations expressed support for the majority of provisions set out in the revised mandate. Some delegations expressed their preference to maintain the General Approach on specific topics. Some delegations expressed scrutiny reservations on all or part of the text but could accept the requested flexibility in principle with a reservation that their final view would depend on the exact wording to be negotiated. To further respond to key concerns of delegations, after a written consultation, the Presidency made further revisions to its proposed way forward¹⁴. The revised Presidency proposal for a mandate is set out in doc. 12919/22.

⁹ doc. 14237/21

¹⁰ doc. 10027/22

¹¹ docs. WK 12044/22 + ADD 1

¹² docs. WK 12044/22 + ADD 1 REV 1

¹³ doc. WK 12513/22

¹⁴ docs. WK 12044/2022 ADD1 REV 2 and WK 12513/2022 REV 1.

12. On the basis of this mandate, the Presidency will in principle defend the Council's General Approach for most of the provisions. However, the Presidency seeks to have flexibility to address some of the European Parliament's most important concerns and to accept several compromise texts prepared during the inter-institutional negotiations and acceptable to the European Parliament and the Commission, in particular, as follows:

a) On sequence 9 (“Tracking of fishing vessels and fishing restricted areas”):

- i. as regards the definition of fisheries restricted areas, to accept the proposed new definition, while defending the limitation to the rules of the common fisheries policy (CFP), as in the General Approach¹⁵;
- ii. concerning automatic identification systems (AIS), to accept the Commission’s compromise proposal which reflects the text of Directive 2002/59/EC¹⁶ in the control regulation, with a new reporting obligation when switching off the AIS in case of danger¹⁷;
- iii. concerning the use of VMS-data for, amongst others, the purpose of maritime safety and security, to grant flexibility to replace the term “when necessary” by alternative wording, while using different terminology that ensures the limitation of the use of such data in cases other than for fisheries control;¹⁸
- iv. as regards the frequency of transmission of the vessel position data, to accept maintaining the current situation where the frequency is set out in an implementing act¹⁹;
- v. to agree, in two cases, to merge the Parliament’s amendments with those of the General Approach²⁰ and to accept text that was provisionally agreed with the Parliament based on flexibilities granted before²¹.

b) On sequence 10 (“Enforcement, infringements and sanctions”):

- i. to agree to the Presidency’s proposed drafting for a paragraph on the suspension or withdrawal of licences in Article 91(b) of the control regulation, on accompanying

¹⁵ Row 142
¹⁶ Row 214
¹⁷ Row 214a
¹⁸ Row 218.
¹⁹ Row 508a
²⁰ Rows 186 and 204
²¹ Rows 188, 192, 205a

sanctions, as follow up to the deletion of text in Articles 6(3) and (4) by the General Approach;²²;

- ii. to accept the proposed text on Member States' obligations with regard to laying down rules on measures and sanctions and applying those in case of breaches of the CFP²³, as well as a new provision according to which the start of proceedings (and not only the final ruling) would be notified to a Member State concerned²⁴;
- iii. to reject the EP amendment which specifies that no more than one Member State may initiate proceedings or impose sanctions against a natural or legal person concerned, but flexibility to agree to a solution generally recalling the *ne bis in idem* principle, for example, in a recital²⁵;
- iv. to grant flexibility to accept qualifying "fishing without a valid licence" as a serious infringement under Article 90(2) and not under Article 90(3) of the control regulation, but with two exceptions: the situation in which a request for a licence, authorisation or permit is pending and it is subsequently granted, and secondly, a case where a request for a permit is submitted within two working days of the infringement and the permit is subsequently granted²⁶;
- v. to grant flexibility to further clarify the serious infringement consisting in involvement with a vessel engaged in IUU fishing²⁷;
- vi. as regards the manipulation of engines and continuous engine power monitoring devices, to grant flexibility to accept the manipulation of engines as serious infringement per se (Article 90(2)), while including the manipulation of engine power monitoring devices in Article 90(3), with specific criteria;²⁸
- vii. to accept qualifying the illegal disposing of fishing gear as a serious infringement under Article 90(3), with a set of conditions attached²⁹;
- viii. to accept adding the conduct of fishing activities in breach of the fundamental rights set out in Articles 4 and 5 of the Charter of Fundamental Rights of the European Union as serious infringements under Article 90(2).

²² Rows 160, 161 and 903c

²³ Row 827

²⁴ Row 827a

²⁵ Rows 827, 827a, 834a

²⁶ Row 839

²⁷ Row 846

²⁸ Rows 855 and 865b.

²⁹ Rows 855a and 865e

c) On sequence 17 (“Regionalisation”):

- i. while in principle defending the inclusion of a Chapter on “regionalisation”, flexibility to adjust the cases for which delegated powers are granted.

d) On sequence 18 (“Safeguard measures”):

- i. to reject the EP amendment.

IV CONCLUSIONS

13. The Permanent Representatives Committee is invited to enable the Presidency to conduct negotiations with the European Parliament and to:

- endorse the Presidency's suggested mandate for sequences 9, 10, 17 and 18, as set out in doc. 12919/22;
- indicate flexibilities in relation to issues as presented in point 12 of this note.

Annex 1

**Revision of Fisheries Control
Workplan ("Sequencing of provisions")**

Sequence	Regulations	Main topics	Provisions (of the concerned regulations)
Sequence 1	EFCA Regulation 2019/473 (Article 2 of Commission proposal)	EFCA	All provisions of the EFCA regulation for which amendments are suggested, including: <ul style="list-style-type: none"> • Personal data protection (Article 17) • Agency officials as union inspectors (Article 19) • Administrative board (Article 35) • Revenue of the Agency (Article 44) • EP Amendments 285 to 293
Sequence 2	Control Regulation (Article 1 of Commission proposal)	Definitions	<ul style="list-style-type: none"> • Article 4 ("multiannual plan") • definitions that are not linked to Articles and therefore part of other sequences
Sequence 3	Control Regulation	Licence and authorisation	<ul style="list-style-type: none"> • New definitions e.g., "fishing vessel" (Council GA) - catching vessels – Article 4 • Licences and authorisations - Articles 6 and 7 • Markings of vessels and gears - Article 8
Sequence 4	Control Regulation	Fishing without a vessel	<ul style="list-style-type: none"> • New Article 54d/ EP Amendment 161 and EP Amendment 53 (definition of "fishing without a vessel")
Sequence 5	IUU Regulation (Article 4 of Commission proposal)	IT CATCH - digital management of catch certificates	<ul style="list-style-type: none"> • Articles 12a to 12e, 14, 16, 17, 54a and 54b • Annexes II and IV to the IUU regulation – catch certificate
Sequence 6	Control Regulation IUU Regulation	National control programme, surveillance and inspections	<p>Control Regulation:</p> <ul style="list-style-type: none"> • Definition of the rules of the common fisheries policy – Article 4 • Designated ports –Article 43 • Separate stowage of demersal catches subject to MAP– Article 44 • Catch composition and separate stowage of BMCRS - Articles 49 and 49a • Sightings at sea- article 71 • Control Observers – Article 73 • Inspections and inspection reports - Articles 74 to 78 • Union inspectors – Article 79 • Inspection outside the waters of inspecting MS- Articles 80 • National control programmes – Article 93a • SCIPS – Article 95 <p>IUU Regulation:</p> <ul style="list-style-type: none"> • Article 10

Sequence	Regulations	Main topics	Provisions (of the concerned regulations)
Sequence 7	Control Regulation and SMEFF Regulation (Regulation (EU) 2017/2403)	Digitalisation of the catch reporting	<p>Control Regulation</p> <ul style="list-style-type: none"> • Definitions of transshipment, landing, fishing operations, unique fishing trip identification number, fishing trip, and sensitive species – Article 4 • Fishing logbook - Article 14 (except para 4 on MOT), 15, 15a - New article 15aa (Council GA) • Prior notification - Articles 17, 19a, • Transshipment - Articles 20, 21, 22 (except Article 21(3) on Margin of tolerance (MOT)) • Landing declaration – Articles 23, 24 • Control of Fishing effort - Articles 26, 27, 29, 30 and 31 • Retrieval of lost fishing gears - Article 48 <p>SMEFF regulation:</p> <ul style="list-style-type: none"> • New Article 5a of Council General Approach (Amendments to SMEFF Regulation, Chapter VI, Article 28 “Transshipment operations”)
Sequence 8	Control Regulation	Weighing, sales note, Take Over Declaration, Transport document etc.	<ul style="list-style-type: none"> • Weighing – Articles 59a, 60 and 60a • Sales note – Article 62, 64, 65 • Take-over declaration – Article 66 • Transport document – Article 68 (except para. 4 on MOT as per EP amendment 205)
Sequence 9	Control Regulation	Tracking of fishing vessels and fishing restricted areas	<ul style="list-style-type: none"> • Definitions of vessel position data, fishing restricted areas and fishing monitoring centre – Article 4 • VMS - Articles 9 and 9a • AIS – Articles 10 and 12 • Fishing restricted areas – Article 50
Sequence 10	Control Regulation and IUU Regulation	Enforcement, infringements and sanctions	<p>Control Regulation:</p> <ul style="list-style-type: none"> • Definition of sensitive habitat – Article 4 • Proceedings in the event of an infringement - Articles 82 to 88 • Administrative and criminal sanctions – Article 89 and 89a • Serious infringements and criteria for serious infringements – Article 90 and Annex IV • Immediate enforcement measure, accompanying sanctions – Articles 91 and 91a • Point system – Article 92 and Annex III • Register of infringements – Article 93

Sequence	Regulations	Main topics	Provisions (of the concerned regulations)
			<ul style="list-style-type: none"> New Article 93a on Union Register of infringements (EP amendment 270) <p>IUU Regulation:</p> <ul style="list-style-type: none"> Articles 3 and 11 and Chapter IX- Articles 42, 42a and 43
Sequence 11	Control Regulation and Mediterranean Regulation (EC) No 1967/2006 (Article 3 of Commission proposal)	Recreational fisheries	<ul style="list-style-type: none"> Definition of recreational fisheries – Article 4 – EP amendment 48 (new definition of "recreational fishing charter vessel" and EP amendment 49 (new definition of "pesca-tourism") Rules on recreational fisheries - Article 55 Article 3 of Commission proposal (amendments to the Med. Regulation (EC) No 1967/2006)
Sequence 12	Control Regulation EFCA regulation	Data recording by MS and exchange of data	<p>Control Regulation</p> <ul style="list-style-type: none"> Recording of catches by MS – Articles 33, 34, 35, 36, 37 Deductions and adjustments – Article 105 to new Article 107a (Council GA) Analysis and Exchange of data - Articles 109, 110 and 111 Protection of personal & confidential data – Articles 112 and 113 Website - Article 115 <p>EFCA founding regulation</p> <p>Exchange and processing of data and information – Article 17</p>
Sequence 13	Control Regulation	Control in the supply chain	<ul style="list-style-type: none"> Definitions of lot, batch, retail, traceability, direct sale – Article 4 Principle for control of marketing - Article 56 Lots of fishery and aquaculture products – Article 56a Traceability – Article 58 First sale – Article 59
Sequence 14	Control Regulation	Control of fishing capacity including	<ul style="list-style-type: none"> Fishing capacity - Article 38 Monitoring of engine power - Articles 39 and 39a Certification of engine power - Article 40

Sequence	Regulations	Main topics	Provisions (of the concerned regulations)
		Engine power	<ul style="list-style-type: none"> • Verification of engine power and tonnage - Article 41 • New Article 41a (Council GA) Verification of tonnage
Sequence 15	Control Regulation	Control of the landing obligation - CCTVs	<ul style="list-style-type: none"> • Article 25a (Article 13 in Council GA and EP AMs 340, 121 to 127, 327)
Sequence 16	Control Regulation and Baltic Multiannual Plan (MAP) (Article 5 of Commission proposal)	Margins of tolerance (MOTs)	<ul style="list-style-type: none"> • MOT for the fishing logbook - Article 14(4) • MOT for the transshipment declaration - Article 21(3) (EP AM 107) • MOT for transport Article 68 (4) (d) – EP AM 205 • Article 5 of Commission proposal (amendments to the Baltic Sea MAP Regulation (EU) 2016/1139)
Sequence 17	Control Regulation	Regionalisation	<ul style="list-style-type: none"> • New Article 46a (Council GA)
Sequence 18	IUU Regulation	Safeguard measures	<ul style="list-style-type: none"> • New Article 32a IUU Regulation (EP amendment 295)
Sequence 19	Amending Regulation (Article 6 of Commission Proposal)	Entry into force and date of application of some provisions (not part of other sequences)	<ul style="list-style-type: none"> • Article 6 of Commission proposal – EP amendment 299

Empowerments to adopt delegated acts and implementing acts => **discussed with the provision or global discussion**

Date of application of some provisions => **Global discussion**