



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 October 2009**

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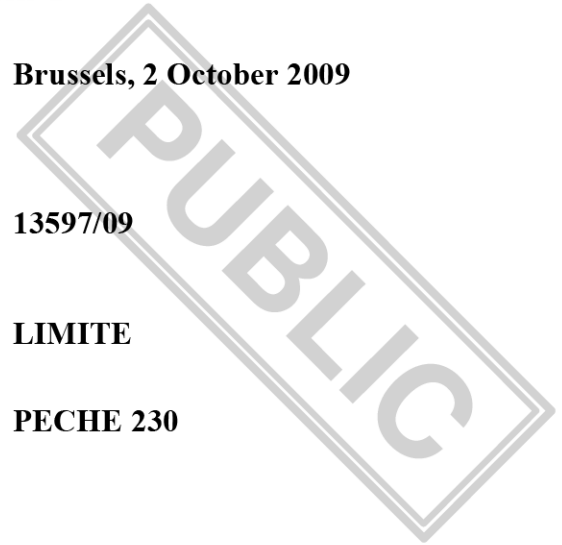
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**13597/09**

**LIMITE**

**PECHE 230**



**REPORT**

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from: Working Party on Internal and External Fisheries Policy  
to: Permanent Representatives Committee (Part 1)  
No. Cion prop.: 15694/08 PECHE 312 - COM(2008) 721 final  
Subject: Proposal for a COUNCIL REGULATION establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy

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**I. INTRODUCTION**

1. The above proposal was submitted to Council on 14 November 2008.
2. The European Parliament gave its opinion on the proposal on 22 April 2009. The Economic and Social Committee delivered its opinion on 13 May 2009, the Committee of the Regions on 17-18 June and the European Data Protection Supervisor on 4 March 2009.
3. The Council had a policy debate<sup>1</sup> on the said proposal at its meeting on 23-24 June 2009.
4. The Working Party on Internal and External Fisheries Policy has considered this proposal on numerous occasions, most recently at its meeting on 1 October 2009.
5. The Delegations maintained scrutiny and linguistic reservations. DK, FR, MT and UK have parliamentary scrutiny reservations.

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<sup>1</sup> The outcome of proceedings of this debate is to be found in doc 11484/09 PECHE 170.

## II. MAIN OUTSTANDING ISSUES

6. The Working Party on Internal and External Fisheries Policy has solved the vast majority of technical issues. This reports focuses on the main outstanding issues. Other issues are to be found in the "outcome of proceedings" plus Delegations' written comments.<sup>1</sup>

### A. Scope (Art.2)

7. CZ, DE, LV, PL, RO, AT, SK consider that the scope should not cover freshwater aquaculture or inland waters. COM argues that the proposed scope coincides with the scope of the CFP in Article 1 of the "Basic Regulation"<sup>2</sup>. Aquaculture activities and the resulting products are covered, without distinguishing between marine and freshwater aquaculture. Fishery products from inland fishing activities would be covered by CFP rules insofar they are related to processing or marketing. COM has indicated it is willing to make a statement confirming that the scope of the "Basic Regulation" is maintained.

### B. Vessel Monitoring System (VMS, Art. 9) and electronic logbook (Art. 15), Automatic Identification System (AIS, Art. 10) and Vessel Detection System (VDS, Art. 11)

8. DE, IE, EL, PT do not support extending the requirement to have VMS and to use an electronic logbook to vessels below 15 m since they consider this involves an additional burden for little practical benefit. PT would like to exclude vessels with technical limitations and some specific operational conditions, in particular, in the autonomous regions.

For COM the derogations for vessels up to 15 metres operating exclusively within the territorial seas of the flag Member State or not spending more than 24 hours at sea cater for the specificities of coastal fisheries.

9. IE, LT, UK, CY, FR, PT, EL consider AIS to be primarily a safety tool which should not be part of this proposal, although they could accept it provided it is not compulsory. UK, FR, IE, EL, PT would like to limit the obligation to use VDS to cases in which Member States (MS) have clear evidence of a cost-benefit.

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<sup>1</sup> docs. 10152/09 PECHE 137 and 7337/09 PECHE 53 + ADDs 1-50

<sup>2</sup> OJ L 358, 31.12.2002, p. 59

### **C. Quantities recorded in the logbook and margin of tolerance (Art. 14)**

10. IE, UK, IT would like to have a single threshold of 50 Kgs for recording in the logbook all quantities of each species caught and kept on board, without a separate threshold of 15 Kgs for species subject to multiannual plans.
11. BE, EE, IE, NL, UK want 10% as a margin of tolerance without 8% for species in multiannual plans and FI wants 20% for pelagic species in the Baltic Sea.
12. IE wants to include control provisions on gillnets and marine protected areas in points 9 and 15 of Annex III of the TAC & Quota Regulation<sup>1</sup> for 2009.

### **D. Prior notification and authorization to access to port (Arts. 17 and 17a)**

13. IE, SI believe it is excessive to apply the prior notification provision (Art. 17) to all landings. IE, IT propose to apply it only to sensitive species and to vessels over 15 m. SI, IT would like a derogation for vessels operating exclusively in the territorial sea of the flag MS or not longer than 24 hours at sea.
14. Article 17a lays down that authorization to access to port for vessels of 24 metres or more will only be granted by the coastal Member State if the information corresponding to the prior notification is complete. BE, NL, PL, PT, ES would prefer a system of automatic authorizations. EE would like to apply this provision only to species subject to recovery plans. SI wishes to exempt vessels fishing for non-quota species.

### **E. Certification of engine power (Arts. 30-32)**

15. The proposal foresees that MS shall certify engine power and issue engine certificates of Community vessels whose engine power exceeds 110 kW subject to some exceptions. IE, SI, LV, IT consider this involves an excessive administrative burden. SI would like Community financing for implementing this article or to apply it only to vessels targeting quota species. IT wishes to limit it to vessels subject to effort regimes. BE proposes that only the main engine power should be dealt with under this provision.

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<sup>1</sup> OJ L 22, 26.01.2009, p. 1

#### **F. Real-time closures (RTC) (Arts. 43-45)**

16. BE, NL, PT, DK, IT believe that the proposed RTC provisions constitute a technical measure and should be deleted from this proposal. For PT, DE, should these provisions stay, the trigger by-catch level (referred to in Art. 43a) should be decided by the Council. For IE, NL, DK these provisions are too detailed. ES wants to clarify the meaning of "group of species" (in Art. 43) to which COM says this is the wording in the current control Regulation.

#### **G. Recreational fisheries (Art. 47)**

17. DK, IE, DE, FI believe this provision to be premature since the impact of recreational fisheries is not well known yet and would create additional administrative burden. FI, FR, IE, NL, PL, PT, UK, BE find the obligation to count the recreational catches against quotas (para. 5) particularly problematic. FI, DE, PL, PT, ES, IT believe management measures for these fisheries should be adopted by the Council and not through comitology (para. 4). MT considers that the prohibition to market recreational catches (para. 2) conflicts with Art. 17.3 of Council Regulation 1967/2006.

#### **H. Weighing (Art. 53)**

18. FI would like to limit the application of the rules on weighing to species subject to quotas. IE, PT want the current weighing system for pelagic fisheries to be in place until implementing rules have been adopted. UK, IE would like to ensure that weighing rules are applied across the EU, including the mackerel southern component. NL wishes that detailed rules to be adopted through comitology are based on risk-analysis.

#### **I. Control observers, (Art. 63) and admissibility of surveillance and inspection reports (Arts. 64-68), Community inspectors (Arts. 70-80) and Commission officials (Arts. 88-94)**

- 19.1 As regards control observers (Art. 63), IT would like to clarify in the text that reports drawn up by observers are not surveillance reports and that the costs from the operation of these observers shall be borne by the operators in the first place and not by MS.

19.2 Concerning the admissibility of surveillance and inspection reports in administrative or judicial proceedings of any MS (Arts.64 and 68) IT, MT wish to take exactly the same wording as in Art. 28 of the "Basic regulation".

19.3 For Community inspectors (Arts.70-80):

- most Delegations would like to make clear in Art. 70 (and Art. 88) that, when assigned as Community inspectors, officials of the Commission or of the body designated by it shall have no more powers than national inspectors;
- IT would also like the exact formulation from the present rules for Arts. 70 and 71. 3;
- as regards requests for authorization of a MS to carry out inspections on fishing vessels in Community waters outside its sovereignty or jurisdiction (Art. 72), NL believes refusals only due to reasons of national security constitutes a limitation on sovereignty;
- UK and BE believe paragraph 2 of Article 76 on enhanced follow up with regard to certain serious infringements is very unclear and difficult to implement in practice.

19.4 As regards Commission's officials (Arts. 88-94):

- for the autonomous inspections in Art. 91, MT and IT say their national laws do not allow inspections by Commission officials without the presence of national inspectors;
- PT is concerned, especially in Art. 91, with the obligation for MS to provide Commission officials with all necessary "means to accomplish their tasks". COM replied that this obligation is already in the control rules. IT does not agree with the possibility for the Commission to audit the national system of sanctions (Art. 92).

**J. Sanctions and point system for serious infringements (Arts. 82 and 84)**

20. FI, DE, LT, PT, UK, IT, DK, in particular, do not wish to go beyond what was already agreed in the framework of the "IUU Regulation" and do not support having minimum sanctions. In Art. 82, FR would like to leave the MS the choice, when calculating the sanction, of using the value of the fisheries products or, when this value cannot be determined, a minimum sanction of 500 euros combined with a multiplying factor for the duration of the infringement or the amount of catches.

21. FI, NL, RO oppose the "point system" (Art.84) since they believe it creates a big administrative burden and is disproportionate. BE, FI, IT say this provision is inconsistent with their judicial systems. FR, IT, LT support the principle provided that: i) the points are harmonized at EU level; ii) the progressivity of the system is increased, in particular, a suspension of one month (instead of the 3 months) the first time the licence is suspended.

**K. Suspension and cancellation of Community financial assistance (Arts. 5.6 and 95)**

22. This article aims to condition Community financial assistance upon compliance with CFP control rules. Several Delegations have expressed concerns about the legality of this provision. FR, BE, LT, EL, LV, PT, IT, SI, RO, PL, IT in particular, do not support the article as it stands. Following an opinion of the Council Legal Service<sup>1</sup>, a drafting proposal for Art. 95 has been presented aiming at clarifying the obligations that the MS must comply with as well as establishing a sufficient link between the compliance failure and the loss of entitlement to financial assistance. Delegations have not expressed their position on this text yet.

**L. Deduction of quotas (Art. 97)**

23. FR, PT oppose the doubling of the multiplying factor in paragraph 4 as it is a double penalty. COM says it is necessary to ensure dissuasiveness. ES wants to clarify "group of stocks" (paragraph 2). COM says this is the wording in the current control Regulation. FR, PT, ES do not support the possibility to deduct quotas for other stocks different from the overfished ones (paragraph 4).

**M. Analysis and audit of data (Arts. 102-103) and official websites (Arts. 106-108)**

24. DK, EE, FI, LV, MT have expressed concerns about the financial implications of these provisions. ES, SI would like additional time for their implementation. BE has difficulties in having all data available in a single database and would like to be able to gather data in several databases as is the case now.

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<sup>1</sup> doc. 13736/09 JUR 379 PECHE 235

**N. Community Fisheries Control Agency (Art. 112)**

25. Most Delegations do not want to extend the Agency's mandate. NL is concerned that the possibility to acquire equipment implies shifting the control and inspection budget from MS to the Community. In addition, FR, DK, in particular, do not support the proposed emergency unit (point.17d).

**O. Entry into force (Art.116)**

26. COM proposes 1 January 2010 to ensure consistency with the "IUU Regulation", with sanctions, the points system and the establishment of databases entering into force later. Most Delegations would prefer 1 January 2011 to allow them sufficient time to adapt to the new provisions. IT wants 1 January 2013 to coincide with the CFP reform.

**P. Simplification of control (DK proposal for a new Art. 94bis)**

27. DK, supported by NL, proposes a new provision enabling the Commission in the future to suspend certain control provisions in a Member State where they are duplicated by other national control systems (e.g. traceability). COM is reluctant as it could undermine having a level playing field on control and legal certainty on which control rules are applicable.

**III. REQUEST TO COREPER**

28. COREPER is invited to examine the outstanding issues.

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