



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 8 October 2009**

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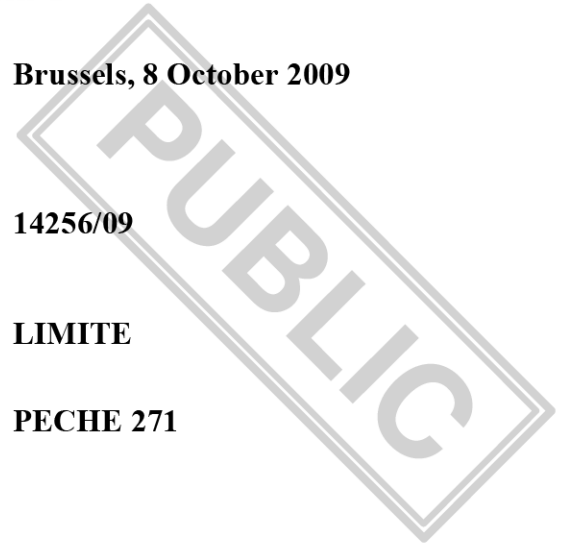
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2008/0216 (CNS)**

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**14256/09**

**LIMITE**

**PECHE 271**



## **REPORT**

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from: Permanent Representatives Committee (Part 1)

to: Council

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No. Cion prop.: 15694/08 PECHE 312 - COM(2008) 721 final

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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

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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 considered this proposal on numerous occasions, most recently at its meeting on 1 October 2009.

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

5. COREPER had on 7 October 2009 a discussion on the basis of a Presidency compromise (DS 547/09) and of a Report to Council outlining views of Delegations (13597/09 PECHE 230).<sup>1</sup> However, an important number of outstanding issues remain unsolved.
6. The Delegations maintained scrutiny and linguistic reservations. DK, FR and UK have parliamentary scrutiny reservations.

## II. MAIN OUSTANDING ISSUES

### A. Scope (Art. 2)

7. CZ, DE, LV, PL, RO, AT, SK continue to have problems with this article. COM's statement on the scope included in the Presidency compromise for COREPER did not reassure concerned Delegations.

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

8. DE, IE, EL do not support extending the requirement to have VMS and to use an electronic logbook to vessels below 15 m. DE could accept the application to vessels between 12 and 15 m with exemptions for certain vessels and EL if they are fitted with static gear and fish under a multiannual plan. PT would like to exclude vessels with technical limitations.
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.

### C. Margin of tolerance (Arts. 14 and 19)

10. BE, EE, IE, NL, UK, FR, DE 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.

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<sup>1</sup> For further detailed Delegations' comments, see docs. 10152/09 PECHE 137 and 7337/09 PECHE 53 + ADDs 1-50.

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

11. IE, SI believe it is excessive to apply the prior notification provision (Art. 17) to all landings. IE, IT, EL propose to apply it only to sensitive species and to vessels over 15 m. EL accepts the application to vessels between 12 and 15 m provided they are fitted with static gear and fish under a multiannual plan (same request for Arts. 19 and 21). 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.
12. As regards authorization to access to port (Art. 17a), BE, PL, ES, PT, EE, NL would like limitations to the application of this article.

**E. Certification of engine power (Arts. 30-32) and transshipment (Art.33)**

13. IT would like to raise the threshold from 110 kW to 120 kW and to limit it to vessels subject to effort regimes. IE, SI, LV, IT consider this involves an excessive administrative burden. SI favours Community financing for implementing this article or to apply it only to vessels targeting quota species. BE believes only the main engine power should be taken into account. LV wants to let MS decide on a physical verification (Art. 32.2).
14. As regards transshipment (Art. 33), FI would like a new wording to ensure transshipment could continue without having to have control observers on board for long term periods.

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

15. BE, NL, PT, DK, IT believe that the proposed 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.

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

16. DK, IE, DE, FI, NL believe this provision to be premature since the impact of recreational fisheries is not well known yet and would create an additional administrative burden. FI, FR, IE, NL, PL, PT, UK, BE, DK find the obligation to count the recreational catches against quotas (para. 5) particularly problematic. FI, DE, PL, PT, ES, IT believe management measures 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 Regulation 1967/2006 and FI would like to limit it to species subject to multiannual plans.

**H. Traceability (Art. 50), weighing (Art. 53), electronic completion and transmission of sales notes and take over declaration (Arts. 54a and 57a) and transport (Art. 58)**

17. DK considers the proposed traceability provisions too complex and they should be replaced by a COM declaration stating that more experience is necessary in this regard. For IE it should be made clearer that import products are covered by the traceability rules.
18. SI would like to limit the application of the rules on weighing to species subject to quotas and FI to species subject to reporting obligations with logbook. IE, PT, SI, IT want the current weighing systems to be in place until implementing rules have been adopted. For UK it is a priority to ensure that weighing rules are applied across the EU, including the mackerel southern component.
19. As to the sales notes and take-over declaration, EL proposes in both cases an annual turnover in first sales of fisheries products of EUR 400,000 (and not EUR 200,000).
20. As to the transport document, DK would like to delete the obligation to submit this document to the competent authorities.

**I. Community inspectors (Arts. 70-80) and Commission officials (Arts. 88-94)**

21.1 As to Arts.70-80:

- IE would like to make clear in the text that Community inspectors may carry out inspections only in Community waters under the jurisdiction of a MS (Art.70);
- most Delegations would like to make clear in Art. 70 (and in 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 and no police powers (Art. 27 of the "Basic Regulation");
- as regards Art. 72, NL believes refusals only due to reasons of national security constitute a limitation on sovereignty ("compelling reasons" should be sufficient);

- 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.

21.2 As regards Arts. 88-94:

- On Art. 91, MT and IT say their national laws do not allow inspections by Commission officials without the presence of national inspectors;
- IT does not agree with the possibility for the Commission to audit the national system of sanctions (Art. 92).

**J. Sanctions (Art. 82) and point system (Art. 84)**

22. On Art. 82, FI, DE, LT, PT, UK, IT, DK, FR, MT do not wish to go beyond what was already agreed in the framework of the "IUU Regulation" and do not support having minimum sanctions.

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

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

24. Several Delegations do not support the article as proposed. A new draft for Art. 95 has been presented aimed 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.

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

25. FR, PT oppose the doubling of the multiplying factor (para. 4) as it is a double penalty. FR, IT propose a multiplying factor equal to 1.2. IE would like to deal with historic infringements on a case by case basis. FR, PT, ES do not support the possibility to deduct quotas for other stocks different from the overfished ones (paragraph 4). In this regard, PT suggests including the principle of prior consultation of the MS concerned. BE, LT would like to have an effort threshold equivalent under which the multiplying factor would not apply in Art. 97a (deduction of fishing effort). BE proposes 100.000 Kws/day.

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

26. DK, EE, FI, LV, MT, ES, SI have expressed concerns about financial and administrative issues.

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

27. Most Delegations do not want to extend the Agency's mandate.

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

28. Most Delegations would prefer 1 January 2011 as date of entry into force to allow sufficient time to adapt to the new provisions. This includes later dates for certain articles. Other dates range from 1 January 2012 to 1 January 2015.

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

29. 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.

**III. REQUEST TO COUNCIL**

COUNCIL is invited to examine the outstanding issues.