



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 17 March 2009 (27.03)

**Interinstitutional File:
2008/0216 (CNS)**

**7337/09
ADD 6**

LIMITE

PECHE 53

PUBLIC

NOTE

from: Spanish delegation
to: General Secretariat of the Council

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

Delegations will find attached written comments received from the Spanish delegation on the above proposal.

**COUNCIL REGULATION ESTABLISHING A COMMUNITY CONTROL SYSTEM FOR
ENSURING COMPLIANCE WITH THE RULES OF THE COMMON FISHERIES
POLICY**
COMMENTS OF THE SPANISH DELEGATION

The Spanish delegation has a scrutiny reservation on the document. Nevertheless, it has some general comments to make, without prejudice to its making more detailed comments on the enacting terms.

General remarks:

- The Spanish delegation welcomes the Commission's proposal, since it considers that the current control Regulation has been much amended since its approval and needs to be reformulated to make it simpler. At the same time, though, it believes that this proposal should be examined in the context of the review of the CFP, in order to align control obligations with compliance policy.
- The remarks presented here are preliminary in nature since consultation of the sector and the government authorities involved in its application has not yet been completed. Furthermore, they only cover the proposal as far as Article 44, given that the review in the Council Working Party has only reached that point.
- The new Regulation will have to maintain the current balance of responsibilities between the Council and the Commission.
- The proposal envisages the reduction or abolition of Community financing in certain situations, regarding which there is disagreement.

- The new Regulation significantly increases the number of obligations on vessels and fishing authorities compared to the present situation, not always with justification. The proposal should be based on principles of proportionality and its approach to controls should be based on a risk analysis rather than imposing such a notable increase in administrative workload and obligations on the fisheries sector. It should be taken into account that from next year, when the electronic logbook becomes applicable, Member States' fishing authorities will have almost real-time data on vessel activities, which will enable more administrative and physical checks to be carried out on the fishing activities of vessels without having to increase the obligations imposed on them. Neither Member States nor the Commission will have the necessary organisation nor sufficient personnel to gather and process all the information that the new Regulation provides for. In that light, a more pragmatic approach should be taken.
- The wording of some of the Articles is confused. First, since the obligations arising from Regulations (EC) No 1005/2008 and No 1006/2008 have to be taken into account; also because in some paragraphs reference is made to Community vessels, in others to all vessels including those of third countries. In some cases only fishing vessels are referred to, in others, any vessel involved directly or indirectly in fishing activity. The wording must be revised so that the text as a whole is consistent.
- Regulation (EC) No 1966/2006 already imposes new requirements compared to the present situation; these were developed through Regulation (EC) No 1077/2008, and in some cases they conflict with the provisions in the present proposal.
- It will not be possible for the new obligations included in this Regulation to be applied from 2010. It must be remembered that the electronic logbook provisions are to come into force at that time, so that Member States are already working to fulfil those new requirements. A reasonable time, not less than a year following their approval, must therefore be allowed for the new obligations to start to apply.

- No reference is made to the possibility of taking advantage of the quota surpluses that are left unfished because Member States' fleets do not have the capacity to fish them and that could be offered to other Member States to make their fisheries more profitable. Rules would have to be established for their use.
- Research is needed into the consequences of closing fisheries of species caught as by-catches. It only will lead to more discards.
- The articles relating to discard reduction and real-time closures are too theoretical and do not take into account the varied fisheries, fleets and fishing areas. These measures should furthermore be aligned with those to appear in the forthcoming Regulation on technical measures.
- Certain aspects of the wording also need to be considered.

Comments on the Articles

Article 1 Subject matter

Article 23 of Regulation (EC) No 2371/2002 refers to control, inspection and enforcement. We suggest that the same terms be used in this Article and throughout the proposal generally.

Article 2 Scope

This Article must be consistent with the obligations established for Community and third-country vessels, laid down in Regulations (EC) No 1005/2008 and No 1006/2008.

The phrase "all activities" should be modified to read "all fishing activities covered by the CFP".

Article 4 Definitions

1. Include landing and fattening among fishing activities.

Replace "searching for fish" with "fishing".

3. [Concerns Spanish wording:] Use the term "conservación" instead of "protección", a term which has never been employed hitherto and which may cause confusion.

4. Use the terms used in Article 23 of Regulation (EC) No 2371/2002 to define "control".

6. Specify whether inspectors are also included in the definition of "official". It should accordingly be stated in the definition of "official" whether inspectors, observers and inspection assistants are included.

7. Fishing licence. The use of a fishing capacity should be accompanied by an allocation of quotas or fishing opportunities, which is not the case in all fisheries. It would be preferable for this definition to be linked to the possibility of carrying on the activity using a specific fishing gear. The definition should also state that it is integral to the vessel and not transferable.

The Spanish term "amarre" should be replaced by "armamento" in this definition.

8. Definition of "fishing authorisation". Fishing authorisations should not be restricted to Community waters. Fishing authorisations are in fact covered in Regulation (EC) No 106/2008.

10. Marine Protected Area. The creation of these areas must accord with either international or Community provisions. They must in either case be effective. We also propose replacing the expression "reserved by law" with "reserved by a regulatory measure", since a Marine Protected Area can be created by provisions that do not belong to the category of "law".

12. It is not clear whether the tugboats and vessels with shipboard tanks that are involved in the transfer of catches of bluefin tuna are included in the vessels [in ES, "buques *pesqueros*", i.e. "*fishing* vessels"; EN has just "vessels"] referred to here.

In addition, if the vessels belonged to a third country and took part in the transfer from a Community vessel in non-Community waters, they would not be covered by this Regulation.

13. Replace the word "violation" [ES: " infracción "], which is too specific and prejudices the outcome, with "may constitute an infringement [ES: " vulneración"]", since it may not necessarily be a violation when the relevant checks have been carried out.

16. The definition of "lot" in this case is different from that used in Regulation (EC) No 1005/2008. They should be similar.

17. Processing. Keeping whole or gutted fish on ice, without its inherent characteristics being altered, should not be counted as processing.

20. Integrated maritime surveillance network. A definition of maritime surveillance should be included, just as fisheries surveillance is defined. That would undoubtedly exceed the remit of the CFP, for which reason we wonder whether it is appropriate in the control Regulation.

Since the Regulation also covers aquaculture, the Regulation must specify whether it affects support vessels engaged in that activity.

Article 5. General principles

1. Control of imports is already covered in Regulation (EC) No 1005/2008 and even, as regards the Atlantic, in the future Regulation on technical measures.

3. Replace "all [...] means" with "the appropriate means" at the end of this paragraph.

6 and 7. The payment of EFF funds should not be linked to fulfilment of control obligations. The wording of these paragraphs also leads to great legal uncertainty, since neither the procedures and the forms of application concerned, nor their scope, are defined.

Article 6. Fishing licence

1.-The word "valid" should be replaced by the word "current".

3 and 4.- There are also provisions for Community vessels in Regulation (EC) No 1006/2008 which these paragraphs should refer to.

Article 7. Fishing authorisation

1. - The word "valid" should be replaced by the word "current".

The wording of the paragraph needs to be revised: the subject is Community vessels operating in Community waters but point (f) mentions areas not under the responsibility of an RFO.

Some of the cases mentioned in points (a) to (g) are repetitive and redundant. For example, a multiannual plan may entail a fishing effort management regime.

There is no clear and precise definition of "scheme of progressive reduction of discards" in the various fisheries.

2. It is not clear what is meant by "overall figures on fishing effort" in relation to the information to be sent to the Commission.

3. It is not clear what information the Commission is requesting in this paragraph or how and when, etc the information is to be sent.

5. Replace "the procedure for the issue of" by "content of".

Since the wording of this Article is ambiguous, a new Article on the information to be provided by Member States to the Commission (what, how often, etc) will probably have to be added.

Article 8. Marking of the fishing gear

Regulation (EC) No 356/2005 lays down rules for the marking of passive fishing gear, is not being repealed and must therefore be taken into account.

Article 9. Vessel Monitoring System

2. The requirement for vessels between 10 and 15 meters in length to be fitted with a VMS is totally disproportionate. That requirement is inconsistent with the proportionality principle referred to in the recitals. This fleet segment should be, in general, exempt from the VMS requirement considering the brevity and eminently coastal nature of the fishing trips undertaken. Only in specific and justified cases may the use of a VMS be necessary.

3. The formulation "is likely to land" is vague. The eventuality in question is already covered by the requirement to transmit data to the coastal Member State. The same applies to "in the waters of which the fishing vessel is likely to continue its fishing activities".

5. This requirement already exists under Regulation (EC) No 199/2008 and does not need to be repeated here.

6. The paragraph should be deleted in view of the earlier comments on paragraph 2.

7. Include non-fishing vessels engaged in auxiliary fishing activities.

Article 10. Automatic Identification System

Scrutiny reservation

Article 11. Vessel Detection System

Scrutiny reservation

Article 13. New technologies

1. - Member States [...] "may carry out [...]"
2. - The Council "may decide [...]"

Article 14. Logbook

The requirements are excessive and involve a heavy verification burden, which should be confined solely to fisheries where there is a clear need.

1. - The recording of catches discarded at sea should be as from a certain weight: 50 kilos. The cases in which the statistical rectangle needs to be mentioned should be indicated because catch limits apply to all species subject to TACs and quotas.

As for quantities discarded at sea, is it only the species that has to be recorded or the quantity as well? Such discards could be the result of a lack of fishing quotas rather than the type of fishing gear used.

2. The requirements are excessive and justified in exceptional cases only but not as the general rule. It should be pointed out that all bottom fisheries in the Atlantic are already subject to fishing effort restrictions.

3. A margin of tolerance of 5% for all the species retained on board is too low. The present figure of 20% should be maintained and in relation only to species subject to TACs and quotas. The 8% margin under recovery plans is already difficult to comply with. Reducing that figure would make life very difficult for fishermen, generate a heavy administrative workload and result in a large number of infringement proceedings.

4. - When establishing the conversion factors, the specificities of certain fisheries should be taken into account rather than simply performing an arithmetical calculation of the average of the values applied in the Member States. The switch from national to Community conversion factors may result in changes in relative stability.

Article 15. Electronic recording and transmission of logbook data

Since Regulation (EC) No 1966/2002 is not being repealed, the electronic recording provisions in this Article should be consistent with those in that Regulation.

1. Requirement for vessels from 10 to 15 meters in length to keep an electronic logbook. No such measure applies to vessels of less than 15 meters' length under Regulation (EC) No 1966/2006. This step cannot be taken without more experience in the application of the system.

There are no exemptions from electronic procedures for vessels exceeding 15 meters, unlike under the present rules.

In the event of exemptions being applied, no mention is made of vessels having to fill out the data on paper.

2. No electronic recording and transmission requirement should be imposed on vessels of less than 15 meters in length until the same requirement is applicable to vessels exceeding 15 meters in length and the measure has proved to be appropriate.

Article 16. Vessels exempted from logbook requirements

1. It is not clear which vessels the possibility of gathering data by sampling refers to. If under Article 15 vessels up to 10 meters in length are required to keep an electronic logbook, information on all vessels will already be available.

2. In addition to a sampling system, provision should be made for the possibility of obtaining the information from equally reliable sources, such as sales notes, so that Member States with equally reliable sources available to them are not forced to introduce a sampling procedure.

Article 17. Prior notification

1. This is a new requirement for which there is no justification. Until now, prior notification has only been required in certain fisheries subject to management or recovery plans. Furthermore, the four-hour period of notice of arrival is insufficient.

(f) Reporting all catches, including zero catches, contributes nothing. Rather, it would involve recording all the (potentially unlimited) species that could be caught with the fishing gear in question, meaning more work on the vessel and for the authorities, as well as the possibility of errors being introduced into the databases.

Only catches exceeding 50 kilos should be notified.

2. In the case of vessels exceeding 24 meters in length, notification of the port State is contrary to Council Regulation (EC) No 1966/2006 and Commission Regulation (EC) No 1077/2008, which provide that all communications must be electronic and sent to the flag State and that flag States communicate with each other.

Many of the data to be included in prior electronic notifications are already known to the flag State because they have been transmitted to it by the vessel in its daily communications about catches on board. In addition to the transmission cost involved, resending information which the authorities already have increases the administrative burden on vessels and the likelihood of data input error.

There should be no exemptions from the general rule. Any exemptions that are allowed should be granted by the Council. Otherwise, a Commission Regulation could render a Council Regulation inapplicable to any given fishing fleet or group of fishing vessels.

4. Any exceptions to the general rules should be approved by the Council.

Article 18. Transshipment

If fish transfers are also covered by this Article, it should be possible for them to take place at places other than ports.

Article 19. Transhipment declaration

1. - Vessels subject to electronic procedures always communicate with the communications centre of their flag State and the communications centre then forwards the information. Consequently, vessels that have to transmit data electronically are not required to comply with Article 19(1)(b).

The time limit should be 48 hours as at present, not 24 hours as proposed.

4. Any exceptions to the general rules should be approved by the Council.

Article 20. Authorisation to land and to tranship

2.- This requirement should be confined to those fisheries where there is a need for it but should not apply as the general rule.

Article 21. Landing declaration

2.- With respect to the requirement that vessels exceeding 10 meters in length transmit landing declaration data electronically, see our comments on Article 15. Presentation and state of conservation should also be reported.

The two-hour deadline for delivering the landing declaration is too short, will result in a need for corrections and will consequently duplicate the administrative work of collecting data. It should be kept at 48 hours.

3. - This obligation is already stated in Regulation (EC) No 1966/2004 and does not need to be repeated here.

4. - It is not clear whether the exemption relates to the electronic landing declaration or to the two-hour deadline.

It should be stated in any event that landing declarations on paper support remain valid until such time as the requirement to complete them electronically applies.

5. - The time-limit should be 48 hours, not 24 hours as proposed.

6. The computerised procedures are already defined in Regulation (EC) No 1077/2008.

Article 22. Vessels exempted from landing declaration requirements

All of the information on landings by vessels of less than 10 meters in length can be obtained from sales notes, for which reason no sampling is required.

Article 23. Recording of catches and fishing effort

This measure increases the administrative burden, a fact which must be borne in mind. Furthermore, reports other than “A” reports take longer to complete because they concern longer fishing trips for which landing data take longer to become available. A monthly report is therefore acceptable only for species subject to TACs and quotas. However, year end should be 31 March of the following year.

The present time-limits should continue to apply for the other reports.

Article 24. Exchange of data

1 and 2. – The conditions and formats for the provision of these data (in certain cases at the request of the Member State and in other cases systematically) are already laid down in Regulation (EC) No 1077/2008 and this Article therefore creates confusion over something for which rules already exist.

The exchange of data on transport is a new obligation.

3. - This is a new obligation for which no provision is made in Regulation (EC) No 1077/2008.

Article 25. Data on the exhaustion of fishing opportunities

1. There is no need to inform the Commission that 80% of a quota has been exhausted since this information is completely accessible to the Commission through FIDES.

2. This requirement should be confined to specific fisheries but should not apply as the general rule.

Article 26. Closure of fisheries by Member States

2. - A fishery may have been closed but fish may still be retained on board, transhipped or landed. When a fishery is closed, Spanish law requires vessels operating in the fishery to make a declaration of the catches they are carrying on board. From then on, no further catches are permitted (checks are performed subsequently), but catches on board at the time of closure of the fishery can be landed if they have been correctly declared.

3. - It should suffice for a Member State to notify the Commission of the closure of a fishery. The Commission should then inform the other Member States.

There should also be a ban on transfers once a fishery has been closed.

Article 27. Closure of fisheries by the Commission

1. The scope for the Commission to close fisheries should be limited and confined to very specific cases or circumstances where such action is fully justified.

2. - In exchanges of information with Member States, the latter should have a period of at least five working days in which to reply.

3. This paragraph should refer to exhausted fish species.

Article 28. Corrective measures

4. - Regulation (EC) No 847/96 only provides for deductions in the year following overfishing.

Article 28a.

An article should be added to establish the procedures for using remaining quotas that will not be fished by the Member State and can be used under certain conditions by other Member States, as well as for transferring quotas of a Member State from one year to the next.

Article 29. Fishing Capacity

General reservation

Article 30. Monitoring of engine power

General reservation

Article 31. Certification of engine power

General reservation

Article 32. Cross checking of engine power

General reservation

Article 33. Transhipments in ports

Weighing is part of the landing process so, in the case of transhipment, catches should be weighed when landed (i.e. after transhipment has taken place).

Transshipment should be defined and differentiated from loading onto a vehicle.

Article 34. Designated ports

1. The requirement under this paragraph should also apply to transshipments.

4. In points (a) and (b), "restricted" should be replaced by "established".

Exemptions from (d) could be made in the case of islands.

Article 35. Separate stowage of recovery species

2. The two requirements mentioned in this paragraph for labelling boxes or containers should be alternatives; "or" should therefore be substituted for "and".

Article 39. Vessel monitoring system

3. There is no indication as to what the alarm system on board vessels consists of. It must also be borne in mind that some fishing activities are allowed in Marine Protected Areas, as is transit through them.

4. When a Marine Protected Area is established, safety or buffer zones are already included as part of it and together they constitute the zone subject to protection.

5. Reservation in relation to the surrounding safety zones.

Article 40. Transit through a Marine Protected Area

1. Some fishing activities are compatible with Marine Protected Areas.

2. The transit report is required of Community vessels only, not of third-country vessels in Community waters.

The transit report is not necessary given the requirement for data transmissions every 15 minutes.

Article 41. Registration of discards

Under the current legislation, including Regulation (EC) No 1077/2008, notification of discards is optional. This obligation should be imposed on specific fisheries, but not apply generally. In any case, in accordance with Article 14, the obligation should only apply to species subject to TACs and quotas, and over 50 kilos.

Specific provisions for the progressive reduction of discards still have not been laid down; a clear definition needs to be established before monitoring procedures are put in place.

Article 42. Logbook checks

It is not clear whether the cross-checks only apply to vessels' positions or whether they apply to catch data as well.

Observers' reports should only be used in specific cases.

Article 43. General provisions

1. The trigger by-catch level, which will vary according to the fishery, zone and species, needs to be defined.

2. The trigger by-catch level should be determined on the basis of at least three hauls.

In addition, in order to adopt closure measures, not only the percentage of juveniles among the individuals of a given species caught but also the percentage of that species in the total catch would need to be known.

Article 44. Real-time closure by Member States

1. The term "trigger by-catch level" must be defined; the procedure and measurement on the basis of which an inspection vessel can determine the trigger by-catch level must also be specified.

2. The trigger by-catch level should be determined on the basis of at least three hauls.

We also cannot accept vessels' being required to move 5 miles, since in many coastal fisheries this would be impossible. The number of vessels must also not be considered as an absolute, and therefore should not be expressed as a percentage. The re-opening of fisheries, which requires an observer on board, cannot easily be implemented as quickly as it would need to be to avoid causing fishermen unnecessary loss.

Article 45. Real-time closure by the Commission

2. The duration of the closure must not exceed 10 days.

Article 46. Re-opening of a temporarily closed area

1. It is not possible to establish a fishery with observers immediately. There is no indication as to the number of vessels required, or who is to bear their costs, or the period during which the vessels with observers are to operate, or how they are to confirm the re-opening of the area.

Could the observers' costs be justified under Regulation (EC) No199/2008?

2. The trigger by-catch level must first be specified.

3. The procedure laid down in this point could be very protracted; for this reason it does not seem particularly practical or realistic.

Article 47. Recreational fisheries

4. Philanthropic purposes do not entail marketing.

Article 53. Weighing of fishery and aquaculture products

4. Control officers, as well as officials, should be involved in these checks.

Article 54. Sales notes

1. The obligations laid down in this paragraph should be aligned with the provisions of Regulation (EC) No 1077/2008 as regards sales notes and the time-limits for submitting them to other Member States.

The time-limit for submitting the sales note is too short; it is currently 48 hours.

Article 63. Observers

We request that a clear distinction between observers and inspectors, and their respective functions, be included; it would be more appropriate for observers and their tasks to be defined in Regulation No 199/2008 than in the control Regulation.

Article 67. Inspection report

1. We would request that a time-limit be laid down for drawing up and, where applicable, sending the report. It should also be stipulated that the report must be signed, and sent only where an infringement has been committed or where the flag State so requests.

Article 68. Admissibility of inspection reports

Scrutiny reservation

Article 70. Community inspectors

Scrutiny reservation

Article 71. Inspections of vessels outside the waters of the inspecting Member State

3. There should be clearer provisions on inspections in international waters and, in particular, on the port to which the vessel should proceed, if it is required to do so.

Article 74. Procedure in the event of an infringement

(c) The meaning of "immediately" needs to be defined.

Article 88. Responsibilities of the Commission

1. We would request that the Commission communicate with the Member State concerned. This would facilitate the inspection process.

Article 91. Autonomous inspections

In autonomous inspections, if the Commission produces a control report, a time-limit for the inspected Member State to make representations should also be envisaged.

Article 93. Inspection and audit reports

1. The time-limit could be 10 days, and reduced to 24 hours in sufficiently urgent cases. It should be specified that the time-limit will be counted from receipt of the document in the official language of the Member State.
2. A time-limit for the inspected Member State to make representations should also be laid down.
3. Ditto.
5. Reports should only be published with the permission of the Member State concerned.
6. A new point should be added, stipulating that the Commission may draw up reports, to be submitted to the Council, setting out the main findings concerning the different fisheries where controls have been carried out.

Article 95. Suspension and cancellation of Community financial assistance

Community financing should not be linked to this Regulation.

Article 96. Closure of fisheries for failure to comply with the objectives of the CFP

As currently worded, this article creates a degree of legal uncertainty, since it uses very vague and potentially misleading terms.

The closure of a fishery should be carried out on an exceptional basis, where there are sound, well-established reasons for doing so and grounds for considering the Member State's response to be unsatisfactory.

Article 97. Deduction of quotas

The text does not specify the reasons or conditions which must exist in order for penalties to be imposed on a Member State for more than one year. To date, Regulation (EC) No 847/96 has only provided for penalties to be applied from one year to the next.

Penalties expressed as a percentage do not accurately reflect the situation as regards the overfishing of a stock. This is especially true with respect to deep-water species, for which Spain's quotas are limited to small quantities, in many cases less than 30-50 tonnes. In these cases, overfishing can be caused simply by a few fishing trips by a small number of vessels. Consequently, for quotas of less than 100 tonnes the penalty applied should be linear.

In other cases, the deduction percentages laid down in Regulation (EC) No 847/96 should be maintained.

Paragraph 3 introduces new measures which are not explained sufficiently. To what other species will the deduction be applied? What will determine whether it is applied for one year or more than one year? Is this intended to apply to species which are caught together with the depleted species?

Article 97a.

A new article should be included governing the use of unfished quotas.

Article 98. Deduction of quotas for failure to comply with the objectives of the CFP

The fact that the Commission, on its own initiative, can take measures to reduce the quotas of a Member State if it receives no response, or an unsatisfactory response, gives rise to considerable legal uncertainty. This should only occur in cases where a strong justification and clear grounds exist for doing so. The criteria, elements and procedures for proving non-compliance need to be defined.

The 10-day time-limit is excessively short: it should be 1 month from receipt of notification in the official language of the Member State.

Article 99. Refusal of quota transfers

If Regulation (EC) No 847/96 is repealed, there should be provision in an article for requesting that quotas be transferred from one year to the next, in line with Article 3 of that Regulation.

The penalties imposed in this article will only aggravate the difficult situation of insufficient quotas which already exists.

Article 100. Refusal of quota exchanges

The Commission cannot oppose the exchange of quotas, which Regulation (EC) No2371/2004 provides for.

(a) The figure of 10% should only apply to quotas over 100 tonnes.

Article 103. Communication of data

The Commission may have access via Web-based services to the data it requires for control purposes, but there will be information in the database which is confidential and cannot be made public.

Article 116. Entry into force

The time-limit laid down for entry into force is too short. It has to be borne in mind that some obligations will require legislative initiatives by the Commission and also by Member States; the date should therefore be 1 January 2011.
