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NOTE

From:	Presidency
To:	Council
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 – General Approach

I. 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. Prior to that, on 17 October 2017, the Council adopted conclusions on a Special Report from the European Court of Auditors on "EU fisheries control: more efforts needed".²

¹ doc. 9317/18 + ADD 1-3.

² doc. 13323/17.

2. The Union fisheries control system is mainly set out in three Council regulations: (1) on the Union control system for fisheries of 2009 ("control regulation")³; (2) on illegal, unreported and unregulated fishing of 2008⁴; and (3) on the European Fisheries Control Agency (EFCA) of 2019⁵. Some other regulations contain additional specific rules relating to fisheries control.⁶
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. The main objectives of the proposal are: (1) to align the fisheries control system with the reformed Common Fisheries Policy (CFP)⁷; (2) to establish coherence between fisheries control and other new Union policies; (3) to ensure more effective and efficient fisheries control through improved, simplified and modernised rules, procedures and instruments; and (4) to facilitate the development of a culture of compliance and equitable treatment of operators within and across the Member States.

³ 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).

⁴ 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).

⁵ 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).

⁶ 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).

⁷ The objectives and principles of the CFP are set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council (OJ L 354, 28.12.2013, p.22).

4. The European Economic and Social Committee delivered its opinion on 12 December 2018⁸. 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 negotiations⁹.
6. The Working Party on Internal and External Fisheries Policy (hereafter "the Working Party") examined the proposal at its meetings between 26 July 2018 and 30 January 2020. To facilitate work on the lengthy legal text and prepare a compromise, the proposal was divided into four blocks.
7. On the basis of discussions in the Working Party and informal videoconferences of the members of the Working Party on Internal and External Fisheries Policy, the Croatian and the German Presidencies presented compromises on blocks 1 and 2 and on part of block 3¹⁰ and made important progress in developing a compromise on the provisions of those blocks. The Croatian Presidency informed about the progress achieved during the first half of 2020 in the informal videoconference of the Ministers of Agriculture and Fisheries of 29 June 2020¹¹. COREPER discussed the progress report of the German Presidency on 25 November 2020.¹²

⁸ doc. 9492/19.

⁹ 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.

¹⁰ WK 5173/2020 REV 1 and WK 10304/2020 REV 1 set out the last compromise proposals under the Croatian and German Presidencies.

¹¹ doc. 8729/20 and WK 7083/2020.

¹² doc. 13087/20.

8. Under the current Presidency, work has focussed on blocks 3 and 4 of the proposal and on resolving outstanding issues in blocks 1 and 2. On the basis of discussions in the Working Party and informal videoconferences of the members of the Working Party, the Presidency firstly submitted a compromise on the entire proposal for examination in the informal videoconference of the members of the Working Party of 29 April¹³. Following that meeting, the Presidency put forward a first revised version of its compromise, which was examined in the Working Party of 20 May¹⁴. While numerous delegations expressed support for that revised version, a number of delegations continued to have important concerns on individual provisions.
9. Based on the comments made by delegations, the Presidency submitted a second revised version of its compromise, which was examined at the Working Party of 3 June¹⁵. The majority of delegations supported this second revised compromise, subject to one modification. The modified text is set out in ADD 1 to this note. A few delegations noted that some of the provisions of the compromise prevented them from giving their full support.

II. THE PRESIDENCY COMPROMISE FOR A GENERAL APPROACH

10. The Presidency compromise encompasses the entire proposal of the Commission, except for the recitals, which have not been discussed in-depth. These recitals and the addition of new recitals, especially to clarify the scope of some provisions, will be addressed at a later stage, reflecting the results of the negotiations with the Parliament on the enacting terms. For some provisions, suggestions on recitals are mentioned in footnotes in the Presidency compromise.
11. The Presidency compromise was drawn up on the basis of the discussions in the Working Party and informal videoconferences of the members of the Working Party, as well as numerous sets of written comments by delegations and extensive bilateral contacts. The Presidency believes that the compromise expresses the best possible balance between the positions of all delegations and constitutes a very good basis for future discussions with the European Parliament.

¹³ WK 5389/2021.

¹⁴ WK 5389/2021 REV 1.

¹⁵ WK 5389/2021 REV 2.

12. The Presidency compromise suggests a large number of modifications of the Commission proposal. The most relevant changes concern the following points (all references relate to Articles of the control regulation and are generally presented in the order of the appearance of the Articles in that regulation):

a) **Control of small-scale vessels with some simplifications and a limited exemption (Articles 9, 14, 15, new 15aa)**

As in the Commission proposal, the Presidency compromise provides that small-scale vessels shall be subject to obligations on the use of vessel monitoring systems (VMS) and electronic reporting tools, like the electronic fishing logbook. However, at the request of several delegations, which expressed concerns about the proportionality of such rules, the compromise envisages some simplifications for vessels under 12 metres length for the use of VMS and electronic reporting tools (Articles, 9(3), 14(2)(d) and 15(2)) and a limited exemption from the obligation to use VMS for some vessels under 9 metres length, subject to strict conditions (Article 9(3a) and (3b)). To facilitate the introduction of VMS and electronic tools for the small-scale fleets, the Commission shall, upon the request of one or more Member States, develop systems at Union level (new Article 15aa).

The European Parliament supports simplifications for vessels under 12 metres in the case of electronic logbooks.

The Presidency considers that the compromise text represents a fair balance between the different positions of Member States. It enhances control of small-scale fleets and creates a level playing field amongst different fleet segments and across Member States, while also providing for a limited number of justified simplifications and exemptions.

b) Remote electronic monitoring to control the landing obligation (new Article 13)

As in the Commission proposal, the Presidency compromise sets out rules for the control of the landing obligation. Rather than focussing on CCTV, as proposed by the Commission (Article 25a), the Presidency compromise introduces remote electronic monitoring (REM) systems, which may consist of various instruments, like sensors and CCTV, depending on technical developments (new Article 13). Catching vessels of 24 metres length overall or more, which pose a serious risk of non-compliance with the landing obligation, must be equipped with REM systems. Member States participate in the assessment of the risk and equal access to data by flag and coastal Member States responsible for control is envisaged. The compromise also contains several safeguards concerning the protection of the right to privacy, in particular, in the case of the use of CCTV (Articles 13(3)(b) and 112(3b)).

The European Parliament provides for CCTV for vessels of 12 metres length or more posing a high risk of non-compliance. It also introduces an incentive-based system and the mandatory use of CCTV in case of recidivism.

The Presidency compromise reflects the preferred approach of the overwhelming majority of Member States, ensuring their involvement in the process of determining the categories of vessels concerned, access to data, and compliance with Union rules on the protection of personal data. Unlike the Parliament, the Presidency compromise considers the REM tool for control only and not as a sanction.

c) The margin of tolerance in the fishing logbook (Article 14(4) and new (4a) and (4b))

The Presidency compromise considerably modifies the Commission's proposal on the rules on the margin of tolerance between estimates of catches recorded in the fishing logbook and amounts resulting from weighing. Next to introducing an exception for small amounts of catches (50 kg and less, Article 14(4)), the compromise provides for a larger margin of tolerance for certain fisheries (small pelagic and industrial species, similar species and unsorted mixed fisheries, Article 14(4a) and (4b)) to address specific difficulties in estimating amounts of catches in these fisheries.

The European Parliament also provides for special rules on the margin of tolerance for certain fisheries, with some differences to the Council as regards the exact scope.

The Presidency considers that the compromise responds to highly important concerns of several delegations and overall, taking into account the entire compromise, proposes a solution that is acceptable to the large majority of Member States.

d) Control of engine power (Articles 39 and new 39a)

Unlike the Commission proposal, the Presidency compromise sets out that the obligation to equip vessels with permanently installed devices to measure engine power only applies to vessels with engines exceeding 221 kilowatts using towed gear and posing a serious risk of non-compliance with the CFP rules on engine power. Member States jointly carry out the risk assessment in cooperation with EFCA. The compromise also allows to regularise the engine power, provided certain criteria are respected (new Article 39(2a)).

The European Parliament remains closer to the Commission proposal and also envisages the obligatory use of engine monitoring devices following infringements by the operator.

The Presidency considers that the compromise reflects the preferences of the overwhelming majority of delegations and proposes a proportionate solution ensuring a high level of control where needed.

e) Two new Chapters: Regionalisation (new Article 46a) and Fisheries without a fishing vessel (new Article 54d)

Based on the explicit request of some delegations, the Presidency compromise introduces a new Chapter on regional control measures. It provides the basis for the adoption of Commission delegated acts, on the basis of a joint recommendation submitted in accordance with rules set out in the CFP Regulation¹⁶, to supplement the control regulation with specific regional control measures.

¹⁶ See fn. 7.

The Presidency compromise also provides for a new Chapter on the control of fisheries without a fishing vessel, such as on shore fisheries, and extends certain control rules, like on the traceability of products, to such fisheries. It aims to ensure a certain degree of equality between operators fishing with or without vessels, while ensuring that rules are proportionate to the relative impact on marine resources of such fisheries.

The European Parliament follows the same approach as regards fisheries without a vessel.

The Presidency notes that the inclusion of both new Chapters is favoured by the overwhelming majority of delegations.

f) Recreational fisheries (Article 55)

The Presidency compromise introduces important changes to the Commission proposal, while still ensuring the necessary control of recreational fishing activities. Rather than providing for a general registration and licencing system for recreational fisheries, it requires the Member States only to ensure registration - and the reporting of catches - in the case of species that are subject to specific conservation measures, like bag limits for recreational fishers.

The European Parliament introduces less far-reaching changes to the Commission proposal.

The Presidency notes that the compromise text, that takes the particular concerns of Member States with a strong tradition of recreational fisheries into consideration, is overwhelmingly supported by delegations.

g) Traceability (Article 58)

The Commission proposal sets out rules for the traceability of both fresh and processed fishery and aquaculture products. Due to concerns by a high number of delegations about duplications of and inconsistencies with general food law, the Presidency compromise covers fresh products only (Article 58(9)). It sets out detailed rules on the marking of lots in the control regulation, rather than implementing acts, and on keeping records (Article 58(5a) and (6a)). The compromise does not impose an obligation to use a digital system for the traceability of products (Article 58(6b)).

The European Parliament aims to regulate the traceability of processed products in the control regulation.

The Presidency notes that views of delegations have varied considerably as regards individual elements of the provision on traceability. Based on numerous comments and discussions, it considers that the compromise expresses the preferences of the large majority of delegations while, to the utmost extent possible, accommodating views of all delegations.

h) Weighing of fishery products (Articles 60)

The Presidency compromise re-introduces the currently existing derogations concerning the weighing of fishery products on landing, which have no longer been envisaged in the Commission's proposal.

The European Parliament follows a very similar approach.

The Presidency considers that there is widespread support amongst delegations on retaining those derogations.

i) Revision of the sanctioning system (Articles 90 to 93 and Annexes III and IV)

Based on a large number of comments and intensive discussions in the Working Party and informal videoconferences of the members of the Working Party, the Presidency compromise proposes various changes to the Commission proposal. The compromise:

- provides for the possibility to use administrative and/or criminal sanctions, rather than administrative sanctions only (Article 89a(1) and 91a(5));
- suggests to limit the number of infringements that are *per se* serious and to extend the list of infringements that are serious by virtue of a decision by the competent authorities of the Member States based on uniform criteria set out in Annex IV (Article 90(2) and (3));
- proposes a new and differently structured Annex IV, with clear criteria for each infringement, the seriousness of which is to be determined;
- does not envisage minimum administrative financial penalties (Article 91a(1)); and
- envisages that points assigned for serious infringements are transferred to future licence holders, if the vessel or licence is sold (Article 92(3)).

Except for envisaging administrative and/or criminal sanctions, the approach taken and specific amendments suggested by the European Parliament differ from those set out in the compromise text.

The Presidency considers that the proposed compromise expresses the preferred way forward of the overwhelming majority of delegations, while also, as much as the chosen approach allows, accommodating the wishes of specific delegations that would have preferred pursuing different approach, in particular as regards Annex IV. Despite numerous changes to the Commission's proposal, the compromise facilitates achieving a more effective and equitable sanctioning system.

j) Deductions and adjustments of quotas (new Articles 105(2a) and (3a) and new Article 107a)

In response to concrete concerns by some delegations, the Presidency compromise introduces two new provisions to address the consequences of overfishing by one or more Member States under international agreements. The new provisions envisage that the Commission operates deductions from the quota of the Member State that has overfished (Article 105(2a) and (3a)) in the same time frame as deductions applicable under such agreements and that the Council adjusts fishing opportunities of the Member States that have not overfished so that they do not have to bear negative consequences of overfishing by other Member States (Article 107a).

The Presidency notes that the proposed new provisions, which address an important and currently un-regulated topic, are widely supported by delegations.

k) Delayed start of application of provisions (Articles 9(7), 14(8a), 54d(3) and numerous other Articles)

While the Commission proposal envisages that the amending regulation starts to apply 24 months after its entry into force, the Presidency compromise provides that several specific provisions, in particular those concerning small-scale fisheries and requiring major adjustments in the Member States, like on VMS and the electronic logbook, and those introducing major changes or entirely new rules, like on fisheries without a fishing vessel start to apply 48 months after the entry into force (Articles 9(7), 14(8a) and 54d(3)).

The European Parliament also envisages a delayed start of application (48 months after entry into force) for numerous provisions.

The Presidency considers that the start of application in stages as set out in the Presidency compromise reflects the wish of a large majority of delegations and will allow to properly prepare the implementation of the reformed control system.

13. On 16 June 2021, COREPER endorsed the Presidency compromise for a General Approach on the Regulation amending various Regulations as regards fisheries control set out in addendum 1 to this note (doc. 9390/2/21 REV 2 ADD 1). The Spanish delegation indicated that it would issue a statement. That statement has been distributed in addendum 2 to this note (doc. 9390/2/21 REV 2 ADD 2).

III. CONCLUSIONS

14. Council is invited to adopt the General Approach on the Regulation amending various Regulations as regards fisheries control set out in addendum 1 to this note (doc. 9390/2/21 REV 2 ADD 1).
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