



EUROPEAN COMMISSION

Brussels, 10.7.2012
COM(2012) 370 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation of Article 9.3 of Council Regulation (EC) No 1967/2006
concerning management measures for the sustainable exploitation of fishery resources
in the Mediterranean Sea**

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INTRODUCTION

This report is submitted in accordance with the provisions of Article 9.3 (3) of Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea¹.

Article 9.3 lays down the minimum mesh size to be used at the cod-end of towed nets (i.e. trawl nets; boat seines and shore seines). The main objective of setting a minimum mesh size for towed gears was to avoid further increase in mortality rates of juveniles.

Article 9.3 stipulates in its sub-paragraph (3) that the Commission will submit by 30 June 2012 a report on the implementation of this provision to the European Parliament and the Council.

Article 9.3(3) specifies that the Commission should take into account information delivered by Member States before 31 December 2011. As no information was received by the Commission by that date, at the beginning of 2012² the Commission services asked all Mediterranean Member States to provide data on the degree of implementation of the minimum mesh size requirements, the cost incurred by operators and the possible impact on selectivity. Replies were received from Cyprus, France, Spain, Italy, Malta and Slovenia, and were used in the report.

The Commission also used the information collected and observations made during verification missions carried out by Commission officials from July 2010 to April 2012.

PROVISIONS OF ARTICLE 9

The relevant provisions regarding minimum mesh size are contained in paragraphs 1-4 of Article 9 and read as follows:

Article 9

Minimum mesh sizes

- (1) *The use for fishing and the keeping on board of a towed net, a surrounding net or a gillnet shall be prohibited, unless the mesh size in that part of the net having the smallest meshes complies with paragraphs 3 to 6 of this Article.*

¹ OJ L 409, 30.12.2006; Corrigendum OJ L 36, 8.2.2007, p.7.

² Letter of 10.02.2012 ref. Ares(2012)154023

(2) *The mesh size shall be determined by the procedures specified in Commission Regulation (EC) No 129/2003³.*

(3) *For towed nets, other than those referred to in paragraph 4, the minimum mesh size shall be:*

(1) *until 30 June 2008: 40 mm;*

(2) *from 1 July 2008, the net referred to in point 1 shall be replaced by a square-meshed net of 40 mm at the cod-end or, at the duly justified request of the ship-owner, by a diamond meshed net of 50 mm.*

In relation to the previous subparagraph, fishing vessels shall be authorised to use and keep on board only one of the two types of net;

(3) *The Commission shall submit a report on the implementation of this paragraph to the European Parliament and the Council by 30 June 2012, on the basis of which as well as on the basis of the information delivered by Member States before 31 December 2011, it shall propose due adjustments where appropriate.*

(4) *For trawl nets targeting sardine and anchovy, where these species account for at least 80 % of the catch in live weight after sorting, the minimum mesh size shall be 20 mm.*

The Regulation provided for transitional arrangements, under Article 14, and gave EU operators using smaller mesh sizes up to 31 May 2010 to change their gear appropriately.

In 2011, in the framework of the implementation of a recommendation by the General Fisheries Commission for the Mediterranean, the European Parliament and the Council adopted the following amendment replacing Article 9.3:

(1) *For towed nets, other than those referred to in paragraph 4, the minimum mesh size shall be at least:*

(a) *a square-meshed net of 40 mm at the cod-end; or*

(b) *at the duly justified request of the ship owner, a diamond-meshed net of 50 mm of an acknowledged size selectivity that is equivalent to or higher than that of nets referred to under point (a).*

Fishing vessels shall be authorised to use and keep on board only one of the two types of nets.

The Commission shall submit a report on the implementation of this paragraph to the European Parliament and the Council by 30 June 2012, on the basis of which, as well as on the basis of the information supplied by Member States before 31 December 2011, it shall propose due amendments where appropriate.’;

³ Replaced since by Commission Regulation (EC) No 517/2008, OJ L 151 of 11.6.2008

COD-END OF TOWED NETS

The cod-end, or bag, is the rearmost part of a towed net. Annex 1(f) of Regulation 1967/2006 provides, in particular, a definition for the cod-end of trawl nets as the rearmost part of the trawl, consisting of meshes of the same size and having either a cylindrical or a tapering shape. The cod-end may be rigged directly to the trawl net body or connected with it through an untapered extension piece. The cod-end in trawl nets may sometime be distinguished in the cod-end *sensu stricto* and the extension piece.

Article 9.3 fixes the minimum mesh size specifically for the cod-end because this is the part of the towed nets that has the smallest meshes, where the fish is conveyed and accumulates. This means that the meshes in the rest of the net should be greater than those of the cod-end.

INTERPRETATION

Inspections carried out by the Commission and contacts with national administrations revealed that Member States did not correctly interpret Article 9.3, in particular regarding the allowable mesh size in the parts of the net outside the cod-end. In order to ensure coherent and correct application of the Article, the Commission has provided the Member States with detailed guidance.

Since 2007, the Commission has regularly underlined at the Committee for Fisheries and Aquaculture and in high-level meetings⁴ that Article 9.3 defines the cod-end as the part of the net with the smallest mesh size and that the meshes in the other parts should be bigger. Further clarifications were provided by explanatory notes dated 18 April 2011 and 22 March 2012. In these notes the Commissioner underlined that:

- (a) where the cod-end is made of a square-meshed net of 40mm, the mesh size in the extension piece shall exceed 40mm regardless of the shape (square or diamond) of the mesh;
- (b) where, at the duly justified request of the ship-owner, the cod-end is made of diamond-meshed net of 50mm, the extension piece shall have a mesh size greater than 50mm regardless of the shape of the mesh (square or diamond).

IMPLEMENTATION BY MEMBER STATES

Information provided by Member States

By letter of 10 February 2012, Member States were requested to provide information on the way Article 9.3 was implemented. The Commission analysed the information provided by Member States, which gives an overview of the various aspects of implementation. This analysis excludes Greece who had not provided the information requested at the time of the drafting of this report

⁴ Committee meetings of 11 July 2007, 2 October 2007, 30 October 2007 and 4 December 2007; high-level meetings of 23 January 2008 and 15 July 2009

1. Number of vessels concerned by the change

In total, in the six Member States change of cod-ends concerned 2 525 vessels. A particular problem was signalled by France regarding *gangui* trawlers, which account for more than half of the French trawlers in the Mediterranean. *Gangui* trawlers carry out traditional fishery targeting a mix of demersal species and use a cod-end of 20mm mesh size. The French authorities indicated that this mesh is necessary for *gangui-trawls* to maintain their traditional activity. No other Member States have signalled similar issues in their report.

The Regulation does not however give any possibility to derogate from the minimum mesh size set in Article 9.3 for the trawl nets.

2. Type of mesh used

Vessels overwhelmingly use a diamond shaped mesh. Only 95 out of 2 525 use a square mesh, while 2 430 use a diamond one.

According to Article 9.3 the use of diamond meshes at the cod-end has to be duly justified by ship-owners. The Commission therefore sought to know what justifications ship-owners presented in this respect. The following categories could be identified on the basis of information provided by Member States:

- Diamond meshes come at a lower cost as they are more widely available on local markets. The material used to make square meshes requires a particular expertise which most local manufacturers do not have.
- Square meshes are more difficult to repair.
- The rigging of the nets was incompatible with a square mesh, as the rest of the net was composed of diamond meshes.
- In some cases, fishermen had their own reserves of diamond mesh nets and did not wish to undergo the expense of buying new ones.
- Diamond meshes are more resistant than square meshes.
- Diamond mesh causes less damage to the fish caught.

It should be noted that the amendment of 2011, transposing the GFCM recommendation 33/2009/2 adopted on May 2009, expresses in a clearer manner a further requirement for the justification of a 50 mm diamond mesh at the cod-end. The mesh has to be of ‘*an acknowledged selectivity that is equivalent to or higher than*’ that of a square mesh of 40 mm. The justifications reported by Member States do not reflect such elements, despite the fact that the GFCM recommendation was already binding for the Member States and the EU after its entry into force, in December 2009. For the Commission, due justification should under all circumstances include also considerations of selectivity, not only cost and resistance.

3. Cost incurred

Information on cost related to the change of cod-ends was provided by five Member States. Cost varied greatly, depending on the length of the cod-end and whether other parts of the net had also to be changed.

The reported length of cod-ends concerned by the change varied between 1 and 14 metres, mostly ranging between 2.5 and 12 metres.

For the vast majority (97%) of vessels for which cost information was given, the cost incurred was between 500 and 1000 Euro. This cost however was considerably higher when further parts of the net had to be changed. In a few cases where the whole net had to be changed, the cost could reach 24,000 Euro.

4. Timing

Most Member States declared that the changes in the nets had been completed by 31 May 2010, which was the end of the transitional period for compliance. In some cases, Member States allowed flexibility in the implementation of the minimum mesh size until the doubts over the interpretation of Article 9.3 could be dispelled. In addition, as mentioned above, not all Member States have confirmed their agreement on the interpretation of the allowable mesh size in the parts of the net outside the cod-end. As a consequence, the minimum mesh size is not always applied in the same way in the Mediterranean area and Article 9.3 cannot therefore be considered as fully implemented yet.

5. Impact on selectivity

The Commission asked Member States to provide information on catch composition by size and species before and after the replacement of the nets. Data on catch composition were provided by three Member States and data on size by two only. They indicate that the change of the nets affected the species composition to a small extent, but had a clearer impact on sizes, which increased over 10% after the change of the nets. This means that catch of juveniles has to some extent decreased, which is already a good indicator that the increase in mesh size can be efficient

These data should be considered as indicative only, as they are limited in space and time. One Member State raised the importance of implementing the increase in the trawl mesh sizes not only at EU level but on a regional basis in collaboration with the General Fisheries Commission for the Mediterranean. Full respect of GFCM recommendation 33/2009/2 should therefore be further promoted in the whole area.

Enforcement

Information provided by Member States

Four Member States reported that, in total, they have carried out 3 182 inspections on mesh size and found 84 infringements. The level of fines applied were reported by two Member States and varied between 500 and 2000 Euro. In some cases, the illegal gear was seized or a warning was given to the vessel to change it.

Observations by the Commission

The Commission carried out verification missions under Title X of the Control Regulation⁵ to check, *inter alia*, how Article 9.3 was being enforced by Member States. These verifications found in many instances that gear was not in conformity with minimum mesh requirements,

⁵ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, OJ L 343, 23.12.2009

even after the transitional period had expired on 31 May 2010. Although some progress could be seen in some Member States in 2011, many trawler nets with illegal mesh sizes could still be observed. This clearly indicates that, in order to properly enforce the minimum mesh size, Member States will have to strengthen their control efforts and/or apply stricter sanctions.

A further shortcoming in the controls carried out by Member States was the frequent absence of appropriate mesh measuring instruments. Since June 2008, in line with Council Regulation 517/2008⁶, the determination of mesh size has to be performed with specific EC-gauges, for which this regulation sets the exact specifications. If the measurement is made with other types of instruments, it is not considered to be legal. Thus, even in the case where a mesh size is obviously less than the minimum allowed, no sanctions can be applied if the infringement is not established with the correct instruments. Member States' inspectors do not always carry this instrument or are not properly trained to use it, although most Member States are now equipped with it. One Member State is not in a position to enforce minimum mesh size, as it has no EC-gauges available at all.

CONCLUSION

There are still significant shortcomings in the implementation and enforcement of the minimum mesh size in towed nets in Member States. One of the reasons for the delay in implementation involves the problem of interpretation Member States had with the provisions of Article 9.3. These provisions have been clarified by the Commission and should now be understood and applied in the same way by all Member States.

In order to enforce minimum mesh size, the Commission expects Member States to apply more rigorous and targeted control, using the appropriate measuring instruments, and make sure sanctions are sufficiently deterrent.

In view of the explanations provided, the Commission has asked all Member States to take urgent measures to ensure full and correct application of these provisions and to closely monitor the state of play to ensure that full implementation is reached. Where appropriate, the Commission will not hesitate to make use of the means available to it under the Treaty to ensure compliance with the concerned provisions.

As regards the impact of the implementation of minimum size on selectivity, there are indications that the average size increased. However, a full analysis can only be made once the remaining shortcomings have been addressed and on the basis of data to be provided by all Member States.

⁶ Commission Regulation (EC) No 517/2008 of 10 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 850/98 as regards the determination of the mesh size and assessing the thickness of twine of fishing nets, OJ L 151, 11.6.2008