

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.11.2008
COM(2008) 718 final

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

**on the proposal for a Council Regulation establishing a Community control system for
ensuring compliance with the rules of the Common Fisheries Policy**

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy

1. INTRODUCTION AND BACKGROUND

The European fisheries control policy is at the heart of the CFP, because its credibility depends on its effective application. The control policy has been subject to reforms, in particular in 1993 when the current Regulation was adopted, then in 1998 to incorporate the control of fishing effort and finally in 2002, at the time of the reform of the Common Fisheries Policy (CFP), which made it possible to clarify the responsibilities between the Commission and the Member States, to strengthen cooperation between the Member States and to launch the creation of the Community Fisheries Control Agency.

Despite certain progress, there is a general consensus that there are still many shortcomings in the CFP in general, notably overfishing due to an overcapacity of the EU fishing fleet, and in its control policy in particular.

To address those shortcomings, the Commission has taken a number of initiatives, including the fleet restructuring package of July 2007, and the recently adopted reform of the fisheries control mechanism to eliminate illegal, unreported and unregulated fisheries (IUU Regulation). The Commission also initiated the debate on how to overhaul the CFP from 2012. In the medium term however, the reform of the control system applicable to the CFP should substantially improve the efficiency of fisheries management in the Community.

The control system established in 2002 suffers from serious shortcomings that call into question its overall effectiveness. As both the European Commission¹ and the European Court of Auditors² have highlighted, the current control system is inefficient, expensive, complex, and it does not produce the desired results. The weakness of the control policy reflects negatively on the implementation of other parts of the CFP and undermines the success of conservation and effort management initiatives. Control failures thus contribute to the negative performance of the CFP, which appears unable to deliver on its fundamental objective. Despite several years of implementation of the CFP in fact, the state of resources in the Community waters remains worrying and several stocks are exploited beyond sustainability. The continued failure of the control policy will have significant consequences for the future of fisheries resources, the fishing industry and the regions dependent on fishing. It is within this context that the Commission proposes to substantially reform the control system of the CFP, addressing all its shortcomings and modernising its approach.

The new Control Regulation will apply to all fishing and fishing related activities in Community waters, in the Member States and to activities of Community fishing vessels outside Community waters. It is complementary to the IUU Regulation and to the Regulation

¹ COM(2007) 167.

² Special Report No 7/2007.

concerning authorisations for fishing activities of Community fishing vessels outside Community waters. It ensures that there is no discrimination between Community and third country nationals. Those three Regulations will form the new Control framework

This Communication describes the current situation and challenges, presents the core components of the new control strategy and outlines the measures proposed.

1.1. The current situation

A number of significant problems have been identified in the way the CFP control policy is applied which are related either to shortcomings in the control regime as such or to structural problems and challenges in the fishing sector.

1.1.1. Findings and recommendations of the Court of Auditors

A recent assessment by the Court of Auditors³ of the control, inspection and sanction system applied to the CFP. According to its findings, the current situation is, i.a. characterized by an inadequate regulatory framework and insufficient procedures to exhaustively collect data and to detect inconsistencies between different data. Moreover, the national inspection systems are inadequate to prevent and to detect infringements and the divergences between them do not ensure adequate inspection pressure nor do they optimise inspection activities. Under the current conditions and due to the limitation of its competences the Commission is not able to identify systematically errors and anomalies in the data forwarded by Member States, or to supervise national control systems and form a conclusive opinion relating to their overall effectiveness.

1.1.2. Obsolete and incoherent approaches on control

The Community control system is limited primarily to the control of quota uptakes and technical measures in the fishing process and neglects the other aspects of the CFP, i.a. transports and markets. New needs have arisen with respect to control, which are not covered by the current system, in particular within the framework of fishing effort systems and biologically sensitive fishing zones. The major efforts undertaken over the last years to achieve sustainable exploitation and long-term management of stocks need to be accompanied by a comprehensive and efficient control system in order for these efforts to bear fruit.

1.1.3. Overcapacity

The limits of the control system are further compounded by the general context of persistent overcapacity of the Community fishing fleets. This structural problem lies at the root of the unprofitability of the fishing fleets and creates incentives for non-compliance with the CFP rules. For a large number of vessels, it is only possible to operate profitably by overshooting their quotas and thereby engaging in overfishing. This leads to a vicious circle of fishing vessels overexploiting fish stocks for their economic survival with an increased economic pressure to fish even more excessively in the following years whereas the legal fishing possibilities and quota allocations, as a consequence of this overexploitation, are further reduced. Besides causing serious ecological consequences for the environment this results in lower prices for legal fish, thereby harming the fishermen operating lawfully in the short run and lowering market supplies in the long run.

³ Special Report No 7/2007.

1.2. Drivers for non-compliance

Several drivers of the existing culture of non-compliance with the CFP rules have been identified, which all contribute to the failure of the control system.

Apart from the overcapacity of the fleet, the lack of compliance by the fisheries sector is essentially driven by the fact that the risk of infringements being detected is rather low due to severe shortcomings in national control systems. Moreover, the frequency and intensity of control and inspections differ considerably from one Member State to another and fishermen have to cope with differing procedures and practices. This creates uncertainty and undermines the credibility of inspection reports, therefore making systematic follow-up of infringements in judicial and administrative proceedings more difficult. In addition, even where an infringement is detected, there is no guarantee that appropriate sanctions will be imposed since the sanction system in place is inadequate and not sufficiently deterrent.

A second driver of non-compliance lies in the legal framework for the control policy itself and the respective roles of the Commission and the Member States therein. The legal framework has been amended several times over the last few years and is now far too complex and spread across several Regulations. This complexity and incoherence has led to a lack of clarity and legal certainty which makes it difficult for Member States or the fishing industry to accept the concept and comply with the rules.

Third, the current control system provides for only limited and ineffective control mechanisms on the part of the Commission. The CFP is an exclusive competence of the European Community, which sets the legal framework. Member States have to make sure that fishermen, processors and sellers comply with this legal framework. It is therefore the primary responsibility of the Member States to ensure effective control, inspection and enforcement of the CFP rules. The Commission's task, as the guardian of the Treaty, is to ensure that Member States fulfil their responsibilities. For this purpose, it supervises implementation of the CFP by the Member States. However, the means in the hands of the Commission to ensure that Member States meet their obligations are essentially applicable where there is a breach of Community law. In addition, those proceedings for failure to fulfil an obligation are long, cumbersome and effective only exceptionally.

2. ENVIRONMENTAL AND SOCIO-ECONOMIC CHALLENGES

The various failure of the current control regime is not without a cost. Widespread non-compliance and repeated infringements of the CFP rules have multiple detrimental impacts, both in terms of severe environmental damages to the marine biodiversity and ecosystems and in terms of important economic and social consequences for the Community fishing industry, including the processing and marketing sector.

Given that abundant fish stocks basically reflect a healthy environment, the continuation of the current situation would not allow the full replenishment of the stocks. On the contrary, under current conditions fishing over the top of what has legally been decided or what the stocks are capable to bear are likely to remain a common feature of the Common Fisheries Policy. Such increased pressure to fish outside legal limits would take a particular heavy toll on the ecosystem as TACs are calculated in a way to allow to only extract quantities that do not threaten the state of the stock in question. Extra outtakes by illegal catches undermine that

capacity and may even have consequences for other species that interlink with the stock that is targeted in IUU activities and affect the ecosystem even more.

If the current situation continues, total catch volumes will be even lower and the individual fish will be less valuable than when a stock is be fished within sustainable limits. In addition to the loss of potential income, costs would increase as higher fishing effort will continue to be necessary to catch volumes big enough to create revenue. As a consequence of falling wages and low returns on capitals more fishermen will have to leave the industry, thereby increasing unemployment in coastal areas that often have to face less working opportunities than other areas.

Against this background, a strong case can be made for an urgent and comprehensive reform of the CFP control system.

3. A NEW APPROAH TO CONTROL: THE PROPOSAL FOR A REFORM OF THE CFP CONTROL POLICY

The general objective of the proposed reform is to put in place a comprehensive integrated and uniform policy for the control of fishing activities in Community waters in order to ensure the effective implementation of the CFP. Overall, the new approach to control should be based on simplification, standardisation, increased cost effectiveness and reduction of administrative burden. This proposal is part of the Commission's simplification rolling programme (SRP) of the "Community strategy for simplifying the regulatory environment"⁴ as it will concentrate control provisions that are currently spread in a wide number of overlapping and complex legal texts in one legal instrument. This will contribute to a rationalisation of the control system.

3.1. A new, common approach to control and inspection

The proposal defines the general concept of inspections for all catches at all stages of the chain - at sea, in port, on transports and markets – and introduces harmonised inspection procedures with a view to ensuring uniformity in the implementation of the new control regime. The first main thrust in this context is the introduction of a systematic risk analysis approach and the introduction of a comprehensive traceability system as the basis for fisheries control. The new approach will make the best possible use of modern technologies. In particular data will have to be automated as far as possible and be subject to comprehensive and systematic cross-checks with a view to identifying areas where there is a particularly high risk of irregularities. By proceeding this way the control resources will be effectively concentrated on the areas of risks. Moreover, the use of modern technologies will ease the administrative burden both for fishermen and for the authorities, in particular with regard to managing quotas, while at the same time providing a global view of the situation of fishing activities almost in real time and in a cost and time efficient way. For this purpose the proposal extends the use of the Vessel Monitoring System (VMS), the Automated Identification System (AIS), the Electronic Reporting System (ERS), the Vessel Detection System (VDS) and other new technologies.

To answer new needs on the control of specific fisheries, specific control measures applicable for multiannual plans, marine protected areas and discards will be established and a

⁴ COM(2005) 535

permanent mechanism of real time closures of fisheries under the responsibility of the Member States will be introduced. Since the limitation of effort as a supplementary management tool is becoming more and more important, the monitoring of engine power, e.g. by certification, will be an integral part of the proposal. Finally, as recreational fisheries have an increasing influence on fish stocks and the marine environment, the proposal envisages control measures for this activity, such as the registration of catches.

Actions proposed by the Commission:

Systematic risk analysis as a basis for fisheries control;

Strategic programming, tactical targeting and sampling strategy;

Use of modern technologies and comprehensive data validation systems;

Standardised and coordinated inspection activities and procedures at sea and on land (including transport and market);

Introduction of a comprehensive traceability system;

Specific control measures for multiannual plans, discards, marine protected areas and real time closure of fisheries;

Measures for the control of recreational fishing.

3.2. Moving towards a culture of compliance

An important cornerstone of the proposed Regulation will also be to influence the behaviour of all stakeholders involved in the full range of fishing activities (catching, processing, distribution and marketing). Compliance with the policies and regulations of the CFP should ideally be achieved through not only monitoring and control activities, but as a result of an overall culture of compliance where all parts of the industry understand and accept that the respect of applicable rules is in their own long term interest.

The Commission wants to concentrate the CFP control measures, which are currently spread in many different texts, with the objective of simplifying and rationalising the legislative framework. This will be done by establishing the principles in the proposal itself while laying down the more technical and detailed matters in implementing regulations. This will significantly improve the legal framework leading to more clarity and credibility of the CFP rules.

Moreover, a regime of harmonised and proportionate administrative sanctions must be established if we are serious about ensuring an equal and effective application of the CFP rules. The overriding principle in this context must be that a sanction must remove any economic benefit that may result from the infringement and create a sufficient deterrent on a potential offender. In this respect the proposal firstly defines serious infringements in addition to those already defined in the proposal for a Council Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing⁵. It then establishes levels for the minimum and maximum amount of fines to be applied to natural and legal persons. Furthermore, the proposal creates a penalty point system for infringements carried out by the holder of a fishing permit comparable to similar systems that exist in many countries for traffic violations. In cases of repeated breaches of the CFP rules this mechanism

⁵ COM (2007) 602.

should lead to the suspension or, in particularly serious circumstances and taking into account the principle of proportionality, to the withdrawal of the fishing permit.

Cooperation between Member States is foreseen both on the operational and the administrative level with a view of enhancing both control measures and infringement procedures. The reform extends the possibilities for Member States to inspect each other vessels in all Community waters. The Commission proposes a systematic exchange of information on possible infringements either on request or on a spontaneous basis.

Regarding technical matters the proposal follows a modern approach on the transfer of data and the exchange of information, both between Member States and with the Commission or the CFCA. It is foreseen that in the future, each Member State stores all relevant information and control data on a national website, and depending on the nature of the information, this will be stored either on a public or a secured part of the website, to which the Commission, the CFCA and the other Member States will have remote access. This will significantly facilitate and speed up the access to data for all officials involved in the control system while respecting all existing obligations on confidentiality and the protection of personal data.

In order to enhance cooperation it is also necessary to amend the mandate of the CFCA which became operational in 2007 and which up to now does not have any real powers of its own in relation to control and enforcement of the CFP rules. Its future mandate therefore will cover audits and inspections of national control systems and its mission will be extended to the organisation of operational cooperation between the Member States covering control and inspections at all stages of the chain up to the retailer. Furthermore, the CFCA would be able to assist Member States in order to improve their control systems. For this purpose it could carry out risk analyses and verifications of control data. The CFCA would be enabled to set up an emergency unit when a serious risk to the CFP has been identified which otherwise could not be tackled adequately. It will also play a leading role in the development of an integrated EU maritime surveillance network, by making available its data available to other EU institutions and bodies.

Actions proposed by the Commission:

Simplifying and rationalising the legal framework;

Introducing deterrent and harmonised sanctions (including establishing a penalty point system);

Improving cooperation between Member States and with the Commission;

Reviewing the mandate of the Community Fisheries Control Agency (CFCA).

3.3. Effective application of CFP rules

The reform also aims to clearly define the roles and responsibilities of Member States, the Commission and the CFCA. This is important in order to rationalise procedures, avoid substitution and ensure that the Commission adheres to its core activity of controlling and verifying the implementation of the rules of the CFP by Member States without any longer carrying out micro management decisions. Moreover, the capacity of the Commission to ensure the respect of Community law by Member States has to be strengthened. For that reason the Commission must be able to intervene effectively and proportionately in cases where shortcomings in some Member States threaten the uniform application of CFP rules.

Commission inspectors will be given the same powers as national inspectors. Besides programmed inspections they will be able to carry out inspections on their own initiative without prior notice. In particular where there are reasons to believe that irregularities occur in the application of the CFP rules, the intention is that the Commission can carry out independent inspections and audits of the control systems of the Member States.

As a follow up of such actions, when failures have been identified, the Member State concerned will be given the possibility to remedy those shortcomings and to remove the irregularities. For this purpose a specific action plan can be set up by the Commission in cooperation with the Member State concerned to identify the necessary measures to fix the situation.

Where there are strong indications that a Member State does not take applicable measures after the exhaustion of fishing opportunities leading to a serious threat to the conservation of the resources, the Commission will be able to close the fishery concerned on its own initiative after consultation of the Member State concerned.

Finally, the reform will introduce effective measures enabling the Commission to ensure the respect of the CFP obligations by Member States. In case of poor management there will be the possibility to impose financial measures such as the suspending assistance from the European Fisheries Fund or of the Community contribution to the Member States' control expenditure. Moreover, where a Member State has overfished its quota, the Commission must have the competence to deduct overfished quantities from the annual quota of the following years including a deterrent penalizing factor or to deny transfers or exchanges of quotas. A package of emergency measures for cases where there are serious threats to the conservation of the resource, such as the suspension of fishing activities or the prohibition of landing or placing on the market of fish and fishery products, concludes this chapter.

Actions proposed by the Commission:

Redefining and strengthening the powers of the Commission and the Commission inspectors;

Action plans for deficient Member States to improve their implementation of the CFP;

Extending the possibilities for the Commission to close a fishery;

Possible financial measures against Member States in case of inadequate management;

More flexibility for the Commission to proceed to deductions of quotas and the denial of quota transfers and exchanges in case of inadequate management;

Package of emergency measures.

4. CONSULTATION OF STAKEHOLDERS

In preparation of the proposal a broad and diverse consultation process with Member States and stakeholders took place in order to receive their views on the necessity of a reform. The issue was discussed at a meeting with Member States' Directors-General for Fisheries on 15 January 2008 and at an informal meeting with Fisheries Ministers on 18 February 2008. Member States broadly supported the analysis of the Commission on the current situation and on the necessity of a fundamental change. Representatives of the Regional Advisory Councils (RACs) and the Advisory Committee for Fisheries and Aquaculture (ACFA) have been

consulted in a one day seminar on 10 April 2008. Moreover, several meetings with Member States' fisheries control experts took place in February, April and May 2008.

A public internet consultation was carried out from February to May 2008 in order to involve the public and to allow all interested parties to contribute to the discussion, in particular to assess the impact of a reform on operators and administrations. 25 contributions were received from a wide range of stakeholders including i.a. associations from the industrial sector, fishermen, producers, fisheries control technology stakeholders, non-governmental organisations (NGOs) and individuals. This initiative of the Commission and its main objectives were widely endorsed by the participants and many contributed with valuable and innovative proposals. All agreed on the need for a reform of the control system, confirming that the objectives set out by the Commission in the consultation paper are the main points of interest in the overall assessment of the reform.

5. EXPECTED IMPACTS OF THE REFORM AND TIMEFRAME

The proposed reform will create a truly global and integrated CFP control system as it will encompass all control issues, from the net to the plate. It will not only result in more standardized national control procedures and improve the control capacity and the management of fisheries resources, but additionally it will entail certain necessary structural adjustments of the Community fishing fleets to bring them more in line with long term lawful fishing possibilities. This will favour the establishment of an EU level playing field which is strongly requested both by Member States and the fishing sector alike. As the future control system will contribute to ensuring that only legal fish will be caught, the lack of available quotas will entail a concentration of the fleet by market forces until it reaches a level that allows all remaining vessels to make a living on the basis of lawful fishing opportunities. The vicious circle of fishing vessels having to fish excessively for their economic survival, as elaborated before, would be broken. In the long run the adjustment of the fishing fleet will also bring about a reduction of control and surveillance costs as the likelihood of infringements will be lower when the fishing fleet is able to generate sufficient economic income on the basis of legal catches.

Moreover the new control regime will substantially reduce administrative burdens both for the industry and the administrations since it will ease reporting obligations for the industry and the control authorities. It will also simplify and improve data management of Member States since it will be widely based on electronic systems in the future.

Fishing at a lower rate within the limits of established TACs will deliver significant environmental benefits in terms of stress on fish stocks. The growth in size of fish populations as they recover will lead to an increase in the age distribution of fish both in the population and in the catch. As the Commission will be able to react faster and better to shortcomings, in particular with respect to over-utilisation of fishing quotas, the environment will be less likely to be affected by irresponsible fishing behaviour. Moreover, as a side effect of the reform, science will get more reliable data in a much shorter time frame, permitting a better scientific advice leading to better and quicker management decisions. Since this will lead to an increase in the biomass and therefore to more and better fishing opportunities in the medium term, both environmental and economic improvements should be realised as a result of the new and comprehensive control system. The overall benefits are also likely to have a strong carry through to increased employment, particularly in the processing and ancillary sub-sectors.

This will contribute to restore the confidence of the stakeholders and the general public in the CFP.

6. CONCLUSION

Persistent overfishing and non-respect of the CFP rules in recent decades have led to a dramatic situation of depleted stocks and poor economic performance of the sector. The current problems arising from non-compliance, the damage it has caused to fish stocks and the lack of economic and social stability have been recognised by both the Member States and by the fishing sector itself, who both broadly favour a reform of the current system. Even though this reform will require some structural adjustments in the first years of its application, it will lead to more efficient and effective fishing structures in the long run. The increased clarity and consistency of the control system and the clarification and standardisation of the roles of the different parties involved will provide more transparency. It will therefore lead to a wide support and a broader confidence among the fishing industry and the consumers which is necessary for the success of the CFP. A better confidence of the public in the CFP as such will in turn affect the behaviour and confidence of consumers as they will be more convinced that they are buying a sustainable product.

In conclusion, there are substantial benefits to be gained at all levels, both for the environment and from a comprehensive and coherent system of control and inspection for all stakeholders. Such a system will ensure a level playing field throughout the Community. The Commission therefore calls on the Council and the European Parliament to endorse the proposed reform as outlined in this Communication. It further calls all the European Institutions and stakeholders to join with it in order to work together to meet this challenge.