Comments of the government of the Federal Republic of Germany on the review of the Control Regulation (EC) 1224/2009

Dear

Germany welcomes the initiative of the Commission to revise the Control Regulation (EC) no. 1224/2009 (CR) and appreciates the opportunity to submit comments and recommendations at this early stage of the review process.

On the basis of the criteria which have been discussed in the meeting of the expert group on compliance under the EU fisheries control system in Brussel on 5 July 2017, Germany would like to make the following comments:

I. **Alignment with the CFP**

With respect to an alignment of the CR with the reformed CFP, Germany would like to put the focus on two important components that were introduced by the last CFP reform, namely regionalization and the discard ban.

As to the first component, it has become evident that there is a certain need for tailored solutions taking account of the specificities of every sea area. Nevertheless, Germany has serious doubts as to whether an excessive regionalization would significantly enhance the effectiveness of the EU control system. Consequently, Germany strongly recommends to maintain a common basic control structure with fundamental control features in all EU fisheries in order to assure a level playing field in all Member States. On the basis of these fundamental features further measures through regionalization could be envisaged to address specific problems in particular fisheries. Such possible measures could be for instance the mandatory use of remote electronic monitoring in certain pelagic fisheries.
The second important component of the new CFP is the discard ban. Despite all efforts made, the level of discarding is still high in some fisheries. For example, findings on discards of undersized cod in the Baltic Sea based on data from last hauls in several Member States indicate a discard rate of 7% for western Baltic cod and of 10% for eastern Baltic cod, in individual cases reaching even 50%. At the same time fishery control authorities are faced with the problem to produce legal evidence on individual infringements of the landing obligation that would stand in court. The monitoring of the landing obligation being a new challenge, there is a need for new control tools. Therefore Germany suggests the creation of a legal frame in the reviewed CR which allows for remote electronic monitoring (including CCTV) and/or the deployment of remote piloted aircraft systems (RPAS – drones). A mandatory deployment in specific cases could then be subject to regionalization.

Generally, remote electronic monitoring is considered to be far more cost effective than the use of observers or manned aircrafts. At the same time the discard rate of undersized and less valuable fish at sea was significantly reduced. When deploying these technologies, safeguarding conformity with existing data protection standards is of paramount importance. Close collaboration with the European Data Protection Supervisor is therefore highly recommended.

In the framework of the impact assessment the potential of RPAS as an additional monitoring tool should be thoroughly investigated in view of enabling control authorities to collect legal evidence of individual infringements of the landing obligation at sea.

II. Monitoring and control of small scale fisheries

The Court of Auditors concluded in their report that data reporting from small fishing vessels needs to be improved and that in this context existing exemptions should be reconsidered. Germany agrees that existing weaknesses in this regard should be addressed. However, the current distinction between small and large scale fishing vessels should be maintained in principle. Though, efforts are encouraged to introduce new technical devices which allow electronic reporting for smaller vessels suited for the particular needs of small scale vessels and being affordable for them. The particular situation of open vessels should be taken into account in this context. Some Member States are obviously already developing such monitoring devices for small vessels to address particular issues (for example an app is currently being developed by the German Thünen Institute to monitor fishing in waters of less than 20m in the Baltic.)

III. Recreational Fishery

If recreational fisheries have to be restricted for conservation reasons the revised CR should at least contain common rules on how recreational fisheries subject to a daily catch limit are to be sampled and which risk criteria are to be applied for the establishment of sampling plans.
Monthly catch limits are considered uncontrollable.

IV. Data
Germany recognizes the importance of an effective system for the exchange of data between different control authorities and between Member States and thus welcomes efforts to enhance data collecting and sharing in line with the existing data protection laws.

V. Sanctions, serious infringements and point system
Any further evolution on the CFP rules on sanctions should take into account that sanctions in the field of fisheries are part of the general penal system in a Member State. These systems are generally the result of a centuries old process and, as a result, diverge largely among Member States. Rather than unifying the sanction systems the focus should therefore be on depriving the perpetrator of any possible benefit he was seeking with the infringement.
In a revision of the CR the point system should apply to all infringements qualified as serious. It should therefore also apply to the serious infringements of Article 90(1) points (a) and (b) of Regulation (EC) no. 1224/2009 which currently lack in the reference in Article 92 CR.

VI. Derogations
In general derogations should be avoided and the same rules should apply to all fisheries to the extent possible. However, in certain cases a derogation is warranted if not needed. Germany would see a need for derogations in particular in the following cases:
As to the application of the margin of tolerance in Article 14(3) of Regulation (EC) no. 1224/2009 there is a special case for RSW tanks in pelagic fisheries where the bulk catch is pumped into and kept unsorted until landing without being sorted. In such cases it is technically impossible to determine the catch composition within a tolerance margin of 10%. In such cases it should be allowed to only record the target species and the overall quantity (with the 10% margin), but not every species that might occur in the catch.
Another case where a derogation is needed is weighing of bulk catches in boxes/pallets. In such cases it must be sufficient to weigh only some representative samples of boxes the average weight of which is then multiplied by the number of boxes. In such cases, a need to weigh all boxes would be an unnecessary waste of scarce control resources without any gain in control.

VII. Traceability
In order to strengthen the traceability system Germany suggests the establishment of a central data base at EU level for all traceability related information referred to in Article 58 (5) of the CR. A centralized data base would allow fishery inspectors on the ground to easily verify the veracity of the lot information, in particular for fish stemming from vessels of another Member State. So far there was some uncertainty as to whether the information on the lot is to cover the whole production chain or only one step back and one step forward. If a central data base were to be established at EU level, it would be enough to have the information on the lot
itself one step back and one step forward. This so called "one up, one down" system is already well established in the food system and should hence be closely considered to be implemented in the reviewed CR. In addition, such a database should also include the relevant information on imported fishery products according to the Regulation (EC) no. 1008/2008. This would allow the inspector on the ground to easily get a comprehensive picture of the legal situation of a fishery product at hand.
To the extent possible, the information required under the traceability system and the information for consumers should be harmonized.
It should also be clarified that the traceability system has to be electronic and cannot be paper based anymore.

VIII. Control of fishing capacity
For determining the fishing capacity of each Member State, having detailed knowledge about the fleet sizes is of key importance. Hence, Germany shares the conclusion of the Court of Auditors that knowledge of the actual capacity is to be improved and that, as a consequence, further rules on the monitoring of the capacity are needed. As Articles 39-41 CR deal already with the monitoring of engine power, new rules should focus on the monitoring of gross tonnages (GT).

IX. Simplification
Referring to a possible simplification of the CR, Germany would like to encourage the Commission to pay attention on how to avoid possible duplications of rules. In particular, double rules in areas of costumer information and in the field of traceability are unnecessary and lend themselves to confusion. In these cases references should be made to the original legislation (in the case of the traceability system to the relevant provisions on consumer information in the Common Market Regulation (EU) No 1379/2013), rather than duplicating such provisions.

X. Coherence with other policies
Concerning the target to reach a better coherence with other policies, Germany proposes to ensure the consistency with existing regulations especially in the field of the environment. An important new component of the CFP was the possibility to constitute conservation measures necessary for compliance with obligations under Union environmental legislation. Germany would welcome the establishment of minimum requirements for the control of such fishing restrictions. Building on such minimum requirements applicable to all Natura 2000 areas and other marine protected areas specific measures for different sea areas could be developed through regionalization. Taking account of the high vulnerability of certain protected habitats and species and small dimensions of many protected areas such minimum requirements should be at least equivalent to the requirements established by Article 50 of the Control Regulation for the control of fishing restrictions in general, which is not applicable to fishing restrictions due to environmental obligations.
In view of the application of the landing obligation there is also a need to clarify the application of the animal by-products Regulation (EC) No 1069/2009 to catches not destined for human consumption.

XII. EFCA mandate
Germany acknowledges the crucial role of EFCA in the coordinated enforcement of CFP rules. In light of plans to involve EFCA more in the international dimension of the CFP its mandate should be adjusted accordingly.

XII. Other issues
In the impact study the potential of genetic analysis for fisheries control purposes should be investigated. Since the adoption of Regulation (EC) no. 1224/2009 in 2009 and its reference to genetic analysis as a possible new technology in Article 13(1) CR, eight years have passed with likely technical developments in this field.

Yours sincerely