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## OPINION

### Specific issues relating to the implementation of the Control Regulation (EU 1224/2009)

07 April 2017

#### Background

The NWWAC exchanged views on the evaluation and implementation of *Council Regulation 1224/2009; establishing a Community control system for ensuring compliance with the rules of the common fisheries policy* (Control Regulation), at meetings of the NWWAC Focus Group on Control and Compliance on 27 October 2016 and 11 January 2017 and, thereafter, by correspondence.

The current Control Regulation was examined in detail to identify potential anomalies produced by the introduction of the landing obligation, regionalisation and the Marine Strategy Framework Directive.

#### General remarks

In preparation for the revision of the Control Regulation, the NWWAC suggests that a meeting be arranged between the NWWAC, the NWW Control Expert Group, European Commission, ECFA and individual Member States control authorities, as soon as possible. This meeting should discuss the specific concerns related to the implementation of the current regulations, listed by the NWWAC, as well as the evaluation process.

#### Specific issues relating to the implementation of the Control Regulation (EC 1224/2009)

##### Article 10: Automatic Identification system (AIS)

The NWWAC recognises that this obligation, originally put in place for merchant shipping vessels, applies to fishing vessels exceeding 15 metres' length overall. Article 10 specifies "that AIS shall be fitted and maintained in operation meeting the standards drawn up by the International Maritime Organisation (IMO)".

The NWWAC understands that the original intention of the AIS system on board of vessels is to enhance the safety of navigation, as indicated in IMO (Regulation 19 of SOLAS Chapter V). The NWWAC requests clarification on the purpose of having this regulation included in the fisheries Control Regulation. The AC would like to point out that the AIS system is a freely available online system and should not be used for control purposes.

#### **Article 14: Completion and submission of the fishing logbook**

Article 14(3) states that the permitted margin of tolerance in estimates recorded in the fishing logbook of the quantities in kilograms of fish retained on board shall be 10 % for all species. The NWWAC seeks clarification on the use of estimations, considering that the actual weight of catches must be contained in official documents such as: the landing declaration, transport documentation and sales notes.

Regarding the margin of tolerance of 10%, the NWWAC notes that for small quantities and on the occasion when fishing occurs in challenging circumstances (e.g. rough weather), the accuracy and precision of weighing equipment decreases and this margin may not be met.

#### **Article 15: Electronic completion and transmission of fishing logbook data**

Vessels of 12 metres' length overall or more have to electronically transmit all data referred to in article 14 to the competent authority of the flag Member State at least once a day. The NWWAC notes that not all Member States have adjusted their electronic logbook system to accommodate the additional data requirements of the landing obligation, and that Member States use different formats to collect these data. Even though the Omnibus Regulation (2015/812) includes amendments specifying the data entries which are required in the fishing logbook, it does not specify a description on the format of the logbook. The NWWAC stresses the need to update the reporting systems to take account of the new requirements of the landing obligation, and to harmonise logbook format and content across Member States.

Article 15 specifies that the information referred to in Article 14 shall be sent electronically, at least once a day, to the competent flag state authority. Art 15(2) further requires that a vessel will transmit data upon request of the competent authority of the flag Member State and after the last fishing operation has been completed and before entering port.

Article 15(8) states, however, that *"the competent authorities of a coastal Member State shall accept electronic reports received from the flag Member State containing the data from fishing vessels"* as described above.

The NWWAC notes that, unlike article 9 (3) regarding the vessel monitoring system, article 15 concerning the Electronic completion and transmission of fishing logbook data, does not contain a similar obligation to provide coastal Member States with data from vessels operating in their jurisdiction.

### **Article 17: Prior notification**

This article requires that any vessel of 12 metres' length overall or more fishing on stocks subject to a multiannual plan shall notify the competent authorities of their flag State at least 4 hours before the estimated time of arrival at port.

Industry members of the NWWAC note that a prior notification time of 4 hours can be a problem for certain fisheries, e.g. small-scale fisheries, inshore fisheries, day fisheries. Although Art 17(3) indicates that a vessel can enter a port earlier than the estimated time, the coastal Member State needs to provide permission to the vessel. For such fisheries, however, some industry members note that this may not provide the flexibility needed. OIG members believe that Art 17(3) and the multiannual plans provide sufficient flexibility.

### **Article 44: Separate stowage of demersal catches subject to multiannual plans (MAP)**

According to this article demersal stocks subject to a MAP shall be placed in boxes, compartments or containers separately for each of such stocks in such way that they are identifiable from other boxes. Further, all catches shall be kept according to a stowage plan that describes the location of the different species in the holds. Further, according to Art. 44(3) it is prohibited to mix in any box, compartment or container any quantity of catch of demersal stocks subject to a MAP with other fisheries products.

#### **The NWWAC:**

1. Recommends a standardised stowage plan is developed for the EU that clearly defines what a stowage plan should constitute. a stowage plan;
2. Highlights that there may be associated safety/stability issues depending on how separate stowage on board is interpreted by the control authorities (e.g. 'storage of clearly identifiable species in separate boxes or compartments').
3. Notes that Article 49(a) of the Omnibus Regulation specifies the separate stowage of catches under the minimum conservation reference size in such a way that they are identifiable from other boxes, compartments or containers, and stipulates that those catches shall not be mixed with any other fishery products. Likewise, this may give rise to safety/stability issues depending how the stowage requirement is interpreted by the competent authority of the coastal Member States.

### **Article 50: Control of fishing restricted areas**

According to Article 50(1) the control of a fishing vessel in transit through a fishing zone where a fishing restricted area has been established is the responsibility of the coastal Member State.

The NWWAC emphasises that any area restricted for fishing in order to protect a vulnerable marine ecosystem, rebuild stocks, protect habitats, etc. should also be protected from other potential adverse impacts caused by non-fishing activities in that area. To that end, the different EU agencies

should ensure that cumulative impact assessments are conducted and that all activities that are authorised, are monitored, in order to guarantee the protection of these areas.

The NWWAC suggests for the relevant authorities to investigate the possibility of incorporating a provision that establishes control and monitoring of the effects of all human activities in fishing restricted areas. The NWWAC would like to be consulted on any processes, which would establish such a provision.

#### **Article 89: Measures to ensure Compliance**

There is a lack of clarity in the Control Regulation and in its Implementing Regulation 404/2011 on the procedure to follow when the vessel of a flag Member State is caught committing a serious infringement in the waters of a coastal Member State and when, as a result, penalty points have to be assigned.

Article 89(4), by stating that the coastal Member State shall notify the flag Member State of any definitive ruling, including the number of points assigned in accordance with Article 92, implies that it is for the coastal Member State to assign penalty points. This interpretation is in conflict with Article 126 (5) of the Control Regulation Implementing Regulation, which states that it is for the flag Member State to assign penalty points.

The Control Regulation must be amended to clarify who is responsible for assigning penalty points in these cases, and, if this is the flag Member State, what should the exact content of the notification made by the coastal State referred to in Article 89(4) be, in this case.

#### **Article 90: Sanctions for serious infringements**

According to Art. 90(1), the competent authority of Member States can determine what constitutes a serious infringement taking into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition.

As these criteria are national criteria and vary from one Member State to another, the NWWAC highlights that this may create a problematic situation, especially as the establishment of harmonised and equitable implementation (i.e. a level-playing field) is one of the objectives of the EU fisheries control policy (EC 1224/2009 preamble (4),(9)).

Furthermore, the NWWAC would like to highlight that the statements in Articles 90(2) and 90(5) that Member States should impose “effective, proportionate and dissuasive” administrative and criminal sanctions are too vague. The NWWAC suggests that further detail and explanation should be provided for these criteria to ensure that Member States apply effective sanctions, which would also contribute to a more level-playing field for EU operators in this respect.

## **Article 92: Point system for serious infringements**

Article 92(2) specifies that in case of a serious infringement, penalty points shall be assigned to the holder of the fishing licence. These points shall be transferred to any future holder in case the vessel is sold, transferred or otherwise changes ownership after the date of infringement. At the same time, Article 92(6) specifies a point system should be established to assign the appropriate number of points to the master of a vessel as a result of a serious infringement committed by him. The NWWAC requests further clarification on the appointment of the penalties in the case where the master and licence holder are not the same person.

The NWWAC emphasises that there is a lack of harmonisation between sanctioning systems within and between Member States. The NWWAC is of the opinion that transparency on fisheries control and sanctions is required if competent authorities want to align the level of sanctions that they are imposing, and that this could help overcome inequalities in the treatment of fisheries infringements at EU level. For example, the European Commission could be asked to publish a report in relation to the number of inspections, number of infringements detected, and steps that were taken post-detection (including level of sanctions imposed) on an annual or bi-annual basis as opposed to every five years (Art. 118). Harmonising the level of sanctions between Member States by ensuring that they are all effective, dissuasive and proportionate (Arts 90(2-5)) will take away a sentiment of inequality and thus reduce the risk of non-compliance.

The NWWAC would like to stress the need for equitable (i.e. a level-playing-field) sanctioning of third countries, like Norway and the Faroe, operating in EU waters.

### **Additional proposal**

In France, fishermen have developed tele-declaration techniques<sup>1</sup> for example in glass eel and inshore fisheries. The main advantage of tele-declaration is that it allows fisheries managers to obtain statistics on the fishing activity in real-time, which allows an adaptive management approach. All fishermen involved in the Télécâpêche project have fully utilised the system, even though, this means catch declaration is duplicated at the moment, as a paper logbook is also required.

In Brittany, the fishing industry would like to expand the tele-declaration technique for all vessels under 10 metres' length overall. This initiative is supported by the French administration and a feasibility study was launched at the end of 2016.

The NWWAC is interested in such developments and will monitor the results of the Télécâpêche project and similar initiatives in other Member States in relation to the use of Electronic Reporting Systems for vessels under 10 metres' length overall. An overview of ongoing initiatives can be found on the website of the ICES Working Group on Spatial Fisheries Data ([WG SFD](#), in English only).

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<sup>1</sup> Tele-declaration technique: the Télécâpêche project allows fishermen to declare their catches by FAO species code and weigh in kilo by area code and each fishermen has to give their specific identification number.

The NWWAC would like to bring to the attention an issue regarding Article 60. Although the issue raised does not concern the North Western waters, the AC believes it might be of interest to the MS Group.

#### **Article 60: Weighing of fishery products**

All Member States have to ensure that all fishery products are weighed on systems approved by the competent authorities prior to the fisheries products being held in storage, transported or sold, unless a Member States has permitted a vessel to weigh the fisheries products on board.

In accordance with Art. 2(2) this weighing requirement will also apply to the activities of vessels in maritime waters of the overseas territories and countries (OTCs, Annex II of the Treaty, referring to Guadeloupe, French Guiana, Martinique, Réunion, Mayotte, Saint-Barthélemy and Saint-Martin). These ports may not have appropriate systems in place, as they are sometimes simple fishing shelters, with minimal harbour facilities; for instance, there is no certified balance in Guadeloupe. The majority of the small-scale fishermen (vessels under 10 metres' length overall) weigh the catch directly at the point of sale. Vessels over 10 meters length overall either weigh their catch on board or the catch is weighed at the first point of sale in accordance with the derogation provided in article 61(2).

The EMFF framework allows OTCs to buy certified balances in order to comply with the control regulation without the need for a derogation. Given the length of time taken for EMFF funding to be obtained, the NWWAC would like to stress the need for such derogations until such time that funds are made available.