



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES
POLICY DEVELOPMENT AND CO-ORDINATION
FISHERIES CONTROL POLICY

CONSULTATION DOCUMENT

EVALUATION OF REGULATION (EC) 1224/2009 ON FISHERIES CONTROL

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 13 March 2016** at the latest to the **online questionnaire** available on the following webpage:

http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/control-regulation-evaluation/index_en.htm

The responses to this consultation will provide important input for the Commission services future policy in the field of fisheries control management.

This consultation follows the standard rules of the European Commission for public consultations. Responses will be published unless respondents indicate otherwise in the online questionnaire.

Responses authorised for publication will be published on the following webpage:

http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/control-regulation-evaluation/index_en.htm

1. INTRODUCTION- CONTEXT

The success of the Common Fisheries Policy (CFP) depends very much on the effective implementation of control system requirements. The measures provided for in Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with rules of the common fisheries policy¹ (*hereinafter 'the Control Regulation'*) seek to establish a Union system for control, inspection, and enforcement based on a global and integrated approach which is in accordance with the principle of proportionality and administrative cost-efficiency.

Before the adoption of the Control Regulation, the former control system no longer ensured compliance with the rules of the CFP. Control provisions were contained in a wide number of overlapping and complex legal texts. Some parts of the control system were poorly implemented by Member States which resulted in insufficient and divergent measures in response to infringements of the CFP rules thus undermining the level playing field for fishermen across the EU. The European Court of Auditors² made the same diagnosis: national catch registration systems had numerous shortcomings, basic data were incomplete and unreliable and the legal framework was inadequate and not properly applied by Member States. As a result, the Commission was unable to identify errors and anomalies and take necessary decisions in due time. Inspection systems did not guarantee efficient prevention or detection and there was an absence of general control standards.

Against this background, the Control Regulation consolidated and simplified all control related obligations in a single legal instrument, deleting duplicate regulations and reducing administrative burden. Furthermore, it aimed at developing a new approach to inspection and control, both at EU and Member States level, creating level-playing field across the EU in terms of sanctioning serious infringement on CFP rules, strengthening cooperation and assistance between Member States and with the Commission. It intended to develop a culture of compliance and of enhanced transparency, making more use of modern technologies, implementing a crosschecking methodology to improve the quality of control data, increasing cost effectiveness and reshuffling the mandate of the European Fisheries Control Agency (EFCA)³.

The Regulation entered into force on 1 January 2010.

¹Council 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, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006

²Special Report No 7/2007 pursuant to Article 248(4) second paragraph, EC, on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources.

³Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy

Article 118 of the Control Regulation calls on Member States to report every five years on the application of the Regulation to the Commission. It also calls on the Commission to draw up a report on the basis of these reports and its own observations to be submitted to the European Parliament and the Council. The same article put an obligation to the Commission to evaluate the impacts of the Control Regulation on the common fisheries policy five years after the entry into force.

In addition the Control Regulation has been put on the Regulatory Fitness and Performance Programme (REFIT)⁴ of the Commission, with the main objective to evaluate its impact on the implementation of the CFP rules and objectives, since it entered into force in 2010. The evaluation in this context will deliver an assessment of whether the Control Regulation is fit for purpose by focusing on its simplification and regulatory burden reduction aspects. The evaluation also aims to identify possible areas for further simplification and administrative burden reduction analysis.

2. CONSULTATION

This public consultation is designed to support the evaluation of the Control Regulation for assessing the impacts of the Control Regulation on the CFP five years after the entry into force. The evaluation will address a range of different themes, including whether the objectives of the Control Regulation are being delivered and whether the requirements of the Control Regulation are efficient and effective. This public consultation is an important part of the evaluation process and will be complemented by specific consultations with stakeholders, a study, workshops, interviews, etc.

At this stage, the Commission's services have identified five potential areas for assessment

- Promotion of the level playing field
- Development of a culture of compliance and respect of the Common Fisheries Policy rules
- New instruments of the Commission to ensure the implementation of Common Fisheries Policy by Member States
- Simplification and reduction of administrative burden
- Others

The online questionnaire consists of a short introductory part on identification of the respondents, followed by a series of questions on the topics above listed. The last three questions are open questions, allowing to provide more detailed comments.

⁴ REFIT is the European Commission's Regulatory Fitness and Performance Programme. Action is taken to make EU law simpler and to reduce regulatory costs, thus contributing to a clear, stable and predictable regulatory framework supporting growth and jobs. More information on REFIT can be found on http://ec.europa.eu/smart-regulation/refit/index_en.htm

Promotion of the level playing field

Level playing field is a concept about fairness. In this context it relates to critics to the previous systems, where it was claimed that the rules of the Common Fishery Policy and its control were applied in different ways in the different Member States, creating disparities and inequalities among the various players. The Control Regulation which entered into force in 2010 puts in place a comprehensive integrated and uniform policy for the control of fishing activities in Union waters in order to ensure the effective implementation of the Common Fishery Policy. The regulation 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 aims at making the best possible use of modern technologies. In particular data have been automated as far as possible and are 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 should be effectively concentrated on the areas of risks. Moreover, the use of modern technologies should 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 Control Regulation 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 technologies⁵.

To answer new needs on the control of specific fisheries, specific control measures applicable for multiannual plans have been established. Since the limitation of fishing effort became more and more important, the monitoring of engine power, e.g. by certification, is an integral part of the regulation. Finally, as recreational fisheries have an increasing influence on fish stocks and the marine environment, the Control Regulation envisages control measures for this activity, such as the registration of catches.

Questions

7. Has the implementation of a global and integrated approach of the fisheries control ('from the net to the plate') increased the degree of level playing field among Member States?
8. Has the implementation of standardised fisheries control procedures allowed to put Member States on an equal footing for the control of their fishermen?

⁵ http://ec.europa.eu/fisheries/cfp/control/technologies/index_en.htm

9. Has the role of the European Fisheries Control Agency (EFCA) in developing methodologies and training material for fisheries inspections increased the degree of uniformity of fisheries control among Member States?
10. Has the use of Vessel Monitoring System (VMS), Automated Identification System (AIS), Vessel Detection System (VDS) improved monitoring of vessel operations?
11. Have certification and verification of engine power allowed to significantly reduce fishing efforts?
12. The Control Regulation forced the implementation of modern technologies. What is your opinion on the impacts of using an electronic system for data recording and data exchange?
13. With regards to implementation of multiannual plans, do national control action programmes allow effective prioritisation of control measures?
14. In the current fisheries control regime the whole chain of production and marketing is covered, allowing a coherent and comprehensive control and traceability system of the products, from the catching to retail stage (from the net to the plate). What is your opinion on the current implemented system?
15. Are the provisions of the Control Regulation adequate for the specificities of small scale fisheries?
16. Do flexibilities and derogations for the small scale fisheries segment of the EU fleet provided for in the Control Regulation undermine the level playing field among fisheries/Member States?
17. Small scale fisheries can have a significant impact on fish resources. Do you think the current measures are adequate for reaching the Common Fisheries Policy objectives?
18. Recreational fisheries can have a significant impact on fish resources. Currently, specific provisions on recreational fisheries are in the remit of Member States with the obligation to collect and report catch data of stocks covered by a recovery plan. Do you think the current measures are adequate for reaching the Common Fisheries Policy objectives?

Development of a culture of compliance and respect of the Common Fisheries Policy rules

An important cornerstone of the Control Regulation is to cover and raise awareness among all stakeholders involved in the full range of fishing activities (catching, processing, distribution and marketing) of the importance of compliance with the CFP rules. 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.

A regime of harmonised and proportionate administrative sanctions was established in the Control Regulation for ensuring an equal and effective application of the CFP rules. The overriding principle applied in this context is that a sanction must remove any economic benefit that may result from the infringement and create a sufficient deterrent for a potential offender. The Control Regulation defines serious infringements and establishes criteria for defining the sanctions to be applied to natural and legal persons. Furthermore, the Control Regulation 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 should lead to suspension or, in particularly serious circumstances and taking into account the principle of proportionality, to 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 Control Regulation reform extends the possibilities for Member States to inspect each other's vessels in all Union waters. The Control Regulation allows a systematic exchange of information on possible infringements either on request or on a spontaneous basis. Regarding technical matters the Control Regulation follows a modern approach on the transfer of data and the exchange of information, both between Member States and with the Commission or the European Fisheries Control Agency (EFCA). Each Member State must store all relevant information and control data on a national website, and depending on the nature of the information, this is stored either on a public or a secured part of the website, to which the Commission, the EFCA and the other Member States have remote access. This aimed at 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 the mandate of the EFCA was amended, extending organisation of operational cooperation between the Member States covering control and inspections at all stages of the chain up to the retailer. Furthermore, the EFCA is now able to assist Member States in order to improve their control systems. For this purpose it carries out risk analyses and verifications of control data. The EFCA also enabled to set up an emergency unit when a serious risk to the CFP has been identified which otherwise could not be tackled adequately. EFCA plays a leading role in the development of an integrated EU maritime surveillance network, by making its data available to other EU institutions and bodies.

Questions

19. Do you think there has been a change of behaviour in the fisheries towards better compliance with the Common Fisheries Policy rules since the Control Regulation has entered into force?
20. In your opinion, has the new integrated approach to fisheries control contributed to a positive impact on the status of the EU fisheries stocks?
21. Do you think risk management improves the effectiveness of fisheries control?
22. Do you think the inspection target benchmarks for multiannual plans (listed in Annex I of the Control Regulation) are adequate for an efficient and effective control of fisheries?
23. Specific Control and Inspection Programmes (SCIPs) provided for in the Control Regulation are adopted by the Commission in concert with Member States, and are coordinated by the European Fisheries Control Agency (EFCA) through Joint Deployment Plans (JDPs). What is your opinion on the effectiveness of the SCIPs/JDPs?
24. Does the role of the European Fisheries Control Agency (EFCA) in organizing operational coordination of control activities by Member States for the implementation of SCIPs contribute effectively to the uniform implementation of the control system?
25. The Control Regulation defines certain infringements of the rules of the Common Fisheries Policy as "serious infringements". Does the point system that could potentially lead to withdrawal of a licence in case of serious infringements have a sufficient deterrent effect?
26. Do the sanctioning systems of the Member States have a sufficient dissuasive effect, leading to fewer infringements?

New instruments of the Commission to ensure the implementation of the Common Fisheries Policy by Member States

The Control Regulation clearly defines the roles and responsibilities of Member States, the Commission and the EFCA. 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. Moreover, the capacity of the Commission to ensure the respect of Union law by Member States was strengthened in order to intervene effectively and proportionately in cases where shortcomings in Member States threaten the uniform application of CFP rules. Commission inspectors are given the same powers as national inspectors. Besides programmed inspections

they can 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 is 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 is able to suspend the fishing activities on its own initiative after consultation of the Member State concerned.

The reform introduced measures enabling the Commission to enforce the respect of the CFP obligations by Member States. Where a Member State has overfished its quota, the Commission has 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.

Questions

27. Do the increased powers of the European Commission in verifying Member States' control activities, performing audits and carrying out autonomous inspections increase the compliance attitude of Member States with the Common Fisheries Policy rules?
28. In case of identification from the Commission of systematic shortcomings in the control system of a Member State, action plans are established to address the deficiencies identified. Are those action plans an effective cooperative tool to end situations of systemic deficiencies in the control system of the Member States?

Simplification and reduction of administrative burden

The Commission brought together the CFP control measures in one legal framework, with the objective of simplifying and rationalising the set of former different legal acts. This was done by establishing the principles and framework in the Control Regulation while laying down the more technical and detailed matters in implementing regulations.

The use of modern technologies and the development of an electronic information system and data sharing were also supposed, on a long term, to reduce the administrative burden of the whole system.

Questions

29. The reform of the Control Regulation system in 2009 allowed the merge of several different pieces of legislation covering different aspects of fishery activities. Do you think this has simplified the overall regulatory system?
30. The current control system relies on an intense collection, transmission, validation and exchange of data among different players. Do you think that in the long term, this system leads to less administrative burden than the previous "paper based" one?
31. Do you think the development of common standards and templates for data exchange simplified the data collection and exchange for authorities?
32. Compared to the previous system of fisheries control, do the harmonised procedures for communication among Member States, between Member States and the Commission, and Member States and the European Fisheries Control Agency (EFCA) reduce the administrative burden associated to it?

Others

A central objective of the Common Fisheries Policy which entered into force in 2014, is the progressive elimination of discards in all EU fisheries through the introduction of an obligation to land all catches. This is designed to make better use of the available resources, and responds to public pressure to end the practice of throwing marketable fish back into the sea. The Control Regulation was amended in 2015⁶ to allow for the control of the new provision on landing obligation. A question is posed on this issue, aiming at assessing the adequacy of the measures provided in the Control Regulation to check compliance with the landing obligation.

The European Union is a Contracting Party to the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS), has ratified the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (UN Fish Stocks Agreement) and has accepted the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 of the Food and Agriculture Organization of the United Nations (FAO Compliance Agreement). Those provisions predominantly set out the principle that all States have a duty to adopt appropriate measures to ensure sustainable management of marine resources and to cooperate with each other to this end.

⁶ OJ L 133, 29 May 2015.

The Union is also partner in most of the Regional Fisheries Management Organisations (RFMOs)⁷.

A question is posed for assessing the extent to which the measures provided in the Control Regulation promote compliance with international obligation.

The previous control regime was strongly criticised for not being transparent enough in the rule application. For assessing the suitability of the current system a question is posed on this issue.

The questionnaire is closed by three open questions, allowing the respondents to highlight general strengths and weaknesses of the control regime, and provide more details about their opinions.

Questions

33. A central objective of the new Common Fisheries Policy, which entered into force in 2014, is the progressive elimination of discards in all EU fisheries through the introduction of an obligation to land all catches. This is designed to make better use of the available resources, and responds to public pressure to end the practice of throwing marketable fish back into the sea. The Control Regulation was amended in 2015 to allow for the control of the new provision on landing obligation. Do you think the Control Regulation allow sufficient control of the landing obligation?
34. Does the Control Regulation allow Member States to comply with international obligations rising from the Convention on the Law of the Sea, Food and Agriculture Organisation Compliance Agreement and Regional Fisheries Management Organisations (RFMOs)?
35. Do you consider the current system of data sharing sufficiently transparent?
36. In your view, what are the main strengths of the fisheries control regime?
37. In your view, what are the main weaknesses of the fisheries control regime?
38. In your view, how could the above identified weaknesses being address?

⁷ http://ec.europa.eu/fisheries/cfp/international/index_en.htm