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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control
- Preparation of the trilogue

I. INTRODUCTION

1. On 30 May 2018, the Commission submitted the abovementioned proposal to the European Parliament and the Council.¹ The proposal was presented to the Agriculture and Fisheries Council on 18 June 2018.
2. The Union fisheries control system is mainly set out in three regulations: (1) on the Union control system for fisheries of 2009 ("control regulation")²; (2) on illegal, unreported and unregulated fishing of 2008 ("IUU regulation")³; and (3) on the European Fisheries Control Agency (EFCA) of 2019 ("EFCA regulation")⁴. Some other regulations contain additional rules relating to fisheries control.⁵

¹ doc. 9317/18 + ADD 1-3.

² Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy (OJ L 343, 22.12.2009, p.1).

³ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (OJ L 286, 29.10.2008, p. 1).

⁴ Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency (OJ L 83, 25.3.2019, p. 18). The Commission proposal refers to the predecessor of that regulation of

3. The Commission proposal amends these regulations and envisages the first major revision of the Union fisheries control system since the last reform in 2009. Most amendments relate to the revision of the control regulation. A key objective of the reform is the creation of a more effective and efficient fisheries control system through improved, simplified and modernised rules, procedures and instruments.
4. The European Economic and Social Committee delivered its opinion on 12 December 2018⁶. The European Committee of the Regions decided on 1 October 2018 not to issue an opinion.
5. The European Parliament adopted amendments to the Commission proposal on 11 March 2021 and referred the matter back to the PECH Committee for inter-institutional negotiations⁷.
6. The Croatian, German and Portuguese Presidencies worked towards a General Approach, which was adopted, during the Portuguese Presidency, on 28 June 2021.⁸ All Member States supported the General Approach, except for Poland, which objected to the text, and Finland, which abstained.

II. INTERINSTITUTIONAL NEGOTIATIONS

7. Inter-institutional negotiations started in July 2021. The institutions agreed to divide the Commission proposal into 19 thematic ‘sequences’ (see Annex 1), which were addressed in turn.
8. During the Slovenian, French and Czech Presidencies, 57 inter-institutional technical meetings and 10 political trilogues were held. The institutions examined and negotiated all sequences, except for sequences 12 and 19. On 1 December 2021 and 17 June, 5 October and 18 November 2022, Coreper approved revised mandates covering all of the negotiated

2005, which was replaced in 2019 (Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency (OJ L 128, 21.5.2005, p. 1).

⁵ For example, Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 409, 30.12.2006, p. 11) and Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks (OJ L 191, 15.7.2016, p. 1).

⁶ doc. 9492/19.

⁷ Amendments adopted by the European Parliament on 11 March 2021 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control (COM(2018)0368 – C8-0238/2018 – 2018/0193(COD)), P9_TA(2021)0076.

⁸ doc. 9390/2/21 REV2 + ADD 1-2.

sequences⁹. Based on those revised mandates, a large number of provisions were provisionally agreed by the end of 2022.

9. During the Swedish Presidency, six inter-institutional technical meetings have taken place so far. Discussions have focused on open issues of sequence 10, on sequence 12, as well as, once again, on sequences 11, 13, 14, 15 and 16.

III. PREPARATION OF THE NEXT TRILOGUE

10. In preparation for the trilogue of 8 March 2023, the Presidency organised two technical meetings and numerous bilateral ones with individual delegations. On 2 February, 16 February, 23 February and 27 February 2023, it presented to the Working Party on Fisheries Policy the Presidency's proposed revised mandate on sequences 10 to 16¹⁰. A large number of delegations supported most or all of the Presidency's proposals. Some delegations preferred maintaining the General Approach on specific topics or provided alternative suggestions. A few delegations expressed scrutiny reservations, also noting that their final position would depend on the exact outcome of the negotiations.
11. Following the meeting of the Working Party on 27 February 2023, the Presidency introduced a few additional changes to its proposed way forward. The final version of the Presidency's proposed revised mandate in view of the trilogue on 8 March 2023 is set out in document ST 6640/23.
12. On the basis of that proposed revised mandate, the Presidency will in principle defend the Council's General Approach and the revised mandates previously approved by Coreper, but seeks to have flexibility to address some of the European Parliament's most important concerns in view of an agreement. It suggests accepting several of the compromise proposals put forward by the Commissioner in his letter of 19 October 2022, as well as to agree to various compromise texts prepared during the inter-institutional negotiations with the European Parliament, with the participation of the Commission, in particular, as follows:

⁹ doc. 14237/21, doc. 10027/22, doc. 12919/22 and doc. 14435/22.

¹⁰ docs. WK 1880/23 REV 1, WK 2441/23 REV 1 and WK 2706/23.

a) On sequence 10 (“Enforcement, infringements and sanctions”):

- i) to accept the conduct of fishing activities with the use of forced labour as serious infringement, paired with a provision on the obligations of inspectors in that regard¹¹;
- ii) to agree to minimum financial administrative penalties¹²;
- iii) to accept a possibility for Member States to establish, in their national legal systems, standard rates for administrative financial penalties instead of minimum administrative penalties¹³;
- iv) to agree to a new provision that clarifies the distribution of infringement-points to masters and to grant flexibility to accept implementing acts on the registration of masters and the recording of their points¹⁴;
- v) to accept the failure to comply with obligations to accurately record estimates of quantities within the permitted margin of tolerance as a separate serious infringement under Article 90(3), with a set of criteria attached¹⁵;
- vi) to accept the proposed modifications to the criteria set out in Annex IV to the regulation¹⁶;

b) On sequence 11 (“Recreational fisheries”):

- i) to agree extending, as of 1 January 2030, the rules on the registration of recreational fishers and on the recording and reporting of their catches in the case of species or stocks for which fishing opportunities are set by the Union or which are covered by a multiannual plan, and for which scientific advice indicates that recreational fishing has a significant impact on fishing mortality;¹⁷
- ii) to accept the obligation for coastal Member States to collect, based on a national methodology, and to annually send to the Commission data on catches for species or stocks for which fishing opportunities are set by the Union or which are covered by a multiannual plan, where no specific obligations to record and report those catches exist¹⁸;

¹¹ Row 855b.

¹² Row 883 and 886.

¹³ Rows 887aa and 887a

¹⁴ Row 909 and 923.

¹⁵ Row 857a.

¹⁶ Annex IV to the regulation (linked to sequence 10).

¹⁷ Row 516 and related row 513.

¹⁸ Row 515.

- iii) to accept implementing acts on the tracking of certain vessels and the marking of certain gears used in recreational fisheries¹⁹;
- c) On sequence 12 (“Data recording by MS and exchange of data”):²⁰
- i) to accept a set of minor modifications to the provisions on data recording and exchange of data of the General Approach²¹;
- d) On sequence 13 (“Control in the supply chain”):
- i) to agree to simplify the requirements for the composition of lots after first sale²²;
 - ii) to accept that operators who are supplied with or who supply fresh fishery and aquaculture products transmit traceability information in a digital way²³;
 - iii) to agree that the Commission shall conduct a study on feasible traceability systems and procedures for processed fishery and aquaculture products, including solutions for small operators and to accept, based on the outcome of that study and at the earliest five years after the entry into force of the regulation, implementing acts on detailed rules on traceability requirements for processed products²⁴;
- e) On sequence 14 (“Control of fishing capacity including engine power”)
- i) on the regularisation of engine power, to accept that the relevant provision only refers to the possibility to carry out a regularisation of the engine power in line with national rules concerning periods and criteria²⁵;
 - ii) on the continuous engine monitoring devices, to accept that in one specific geographical marine area, vessels with certain gears and with engines between 120 and 221 kW are equipped with such devices²⁶;
- f) On sequence 15 (“Control of the landing obligation - CCTV”)
- i) to accept that remote electronic monitoring (REM) systems shall include CCTV²⁷;

¹⁹ Rows 524 and 525.

²⁰ Sequence 12 contains mainly technical provisions and will not be discussed at political level in the next trilogue. The provisions on the protection of personal data are still being analysed by experts and are thus excluded from the scope of the proposed revised mandate.

²¹ Numerous rows of sequence 12.

²² Rows 545.

²³ Row 581d.

²⁴ Row 582a.

²⁵ Rows 471d.

²⁶ Row 475.

- ii) to provide flexibility to simplify the rules on the risk assessment used to determine the fleet segments that shall be equipped with REM²⁸;
- iii) to accept a provision that sets out that Member States may provide incentives for vessels that use REM on a voluntary basis and a provision that refers to the use of REM for the control of compliance with the rules of the CFP other than the landing obligation²⁹;

g) On sequence 16 (“Margins of tolerance”):

- i) to grant flexibility to agree to the margin of tolerance, that is, the margin of error in estimates in the fishing logbook, of 20% for any species retained on board that does not exceed 100 kg³⁰;
- ii) in case of catches above 10 tonnes in small pelagic fisheries and fisheries for industrial purposes, to accept that a preferential margin of tolerance only applies if landings are inspected by officials or weighed by independent operators and that, without such inspections or weighing, a margin of tolerance of 10% per species applies³¹;
- iii) to agree that, in the case of small pelagic fisheries and fisheries for industrial fisheries, specific margins can apply to 2% of the by-catches³²;
- iv) to accept a time-limit of 5 years from the entry into force of the regulation for the specific margin of tolerance for the tropical tuna purse seine fishery, paired with the possibility that EFCA develops guidelines for the estimation of catches³³.

IV. CONCLUSIONS

13. The Permanent Representatives Committee is invited to enable the Presidency to conduct negotiations with the European Parliament and to:

- endorse the Presidency's proposed revised mandate for sequences 10, 11, 12, 13, 14, 15, and 16, as set out in document ST 6640/23;
- indicate flexibilities in relation to issues as presented in point 12 of this note.

²⁷ Rows 219d and 219g.
²⁸ Rows 219f and 219j to 219n.
²⁹ Row 219o and 219oa.
³⁰ Row 241a.
³¹ Rows 242, 243c, 244fa, 244fb.
³² Rows 244d and 244fc.
³³ Row 244g.

**Revision of Fisheries Control
Workplan ("Sequencing of provisions")³⁴**

Sequence	Regulations	Main topics	Provisions (of the concerned regulations)
Sequence 1	EFCA Regulation 2019/473 (Article 2 of Commission proposal)	EFCA	All provisions of the EFCA regulation for which amendments are suggested, including: <ul style="list-style-type: none"> • Personal data protection (Article 17) • Agency officials as union inspectors (Article 19) • Administrative board (Article 35) • Revenue of the Agency (Article 44) • EP Amendments 285 to 293
Sequence 2	Control Regulation (Article 1 of Commission proposal)	Definitions	<ul style="list-style-type: none"> • Article 4 ("multiannual plan") • definitions that are not linked to Articles and therefore part of other sequences
Sequence 3	Control Regulation	Licence and authorisation	<ul style="list-style-type: none"> • New definitions e.g. "fishing vessel" (Council GA) - catching vessels – Article 4 • Licences and authorisations - Articles 6 and 7 • Markings of vessels and gears - Article 8
Sequence 4	Control Regulation	Fishing without a vessel	<ul style="list-style-type: none"> • New Article 54d/ EP Amendment 161 and EP Amendment 53 (definition of "fishing without a vessel")
Sequence 5	IUU Regulation (Article 4 of Commission proposal)	IT CATCH - digital management of catch certificates	<ul style="list-style-type: none"> • Articles 12a to 12e, 14, 16, 17, 54a and 54b • Annexes II and IV to the IUU regulation – catch certificate
Sequence 6	Control Regulation IUU Regulation	National control programme, surveillance and inspections	<p>Control Regulation:</p> <ul style="list-style-type: none"> • Definition of the rules of the common fisheries policy – Article 4 • Designated ports – Article 43 • Separate stowage of demersal catches subject to MAP – Article 44 • Catch composition and separate stowage of BMCRS - Articles 49 and 49a • Sightings at sea- article 71 • Control Observers – Article 73 • Inspections and inspection reports - Articles 74 to 78 • Union inspectors – Article 79 • Inspection outside the waters of inspecting MS- Articles 80 • National control programmes – Article 93a • SCIPS – Article 95 <p>IUU Regulation:</p> <ul style="list-style-type: none"> • Article 10

³⁴ Updated on 25.3.2023. Note that the list of Articles in column 4 is non-exhaustive and specific Articles can be added to certain sequences during the negotiations.

Sequence	Regulations	Main topics	Provisions (of the concerned regulations)
Sequence 7	Control Regulation and SMEFF Regulation (Regulation (EU) 2017/2403)	Digitalisation of the catch reporting	<p>Control Regulation</p> <ul style="list-style-type: none"> • Definitions of transshipment, landing, fishing operations, unique fishing trip identification number, fishing trip, and sensitive species – Article 4 • Fishing logbook - Article 14 (except para 4 on MOT), 15, 15a - New article 15aa (Council GA) • Prior notification - Articles 17, 19a, • Transshipment - Articles 20, 21, 22 (except Article 21(3) on Margin of tolerance (MOT)) • Landing declaration – Articles 23, 24 • Control of Fishing effort - Articles 26, 27, 29, 30 and 31 • Retrieval of lost fishing gears - Article 48 <p>SMEFF regulation:</p> <ul style="list-style-type: none"> • New Article 5a of Council General Approach (Amendments to SMEFF Regulation, Chapter VI, Article 28 “Transshipment operations”)
Sequence 8	Control Regulation	Weighing, sales note, Take Over Declaration, Transport document etc.	<ul style="list-style-type: none"> • Weighing – Articles 59a , 60 and 60a • Sales note – Article 62, 64, 65 • Take-over declaration – Article 66 • Transport document – Article 68 (except para. 4 on MOT as per EP amendment 205)
Sequence 9	Control Regulation	Tracking of fishing vessels and fishing restricted areas	<ul style="list-style-type: none"> • Definitions of vessel position data, fishing restricted areas and fishing monitoring centre – Article 4 • VMS - Articles 9 and 9a • AIS – Articles 10 and 12 • Fishing restricted areas – Article 50
Sequence 10	Control Regulation and IUU Regulation	Enforcement, infringements and sanctions	<p>Control Regulation:</p> <ul style="list-style-type: none"> • Definition of sensitive habitat – Article 4 • Proceedings in the event of an infringement - Articles 82 to 88 • Administrative and criminal sanctions – Article 89 and 89a • Serious infringements and criteria for serious infringements – Article 90 and Annex IV • Immediate enforcement measure, accompanying sanctions – Articles 91 and 91a • Point system – Article 92 and Annex III • Register of infringements – Article 93 • New Article 93a on Union Register of infringements (EP amendment 270)

Sequence	Regulations	Main topics	Provisions (of the concerned regulations)
			IUU Regulation: <ul style="list-style-type: none"> Articles 3 and 11 and Chapter IX- Articles 42, 42a and 43
Sequence 11	Control Regulation and Mediterranean Regulation (EC) No 1967/2006 (Article 3 of Commission proposal)	Recreational fisheries	<ul style="list-style-type: none"> Definition of recreational fisheries – Article 4 – EP amendment 48 (new definition of "recreational fishing charter vessel" and EP amendment 49 (new definition of "pesca-tourism") Rules on recreational fisheries - Article 55 Article 3 of Commission proposal (amendments to the Med. Regulation (EC) No 1967/2006)
Sequence 12	Control Regulation EFCA regulation	Data recording by MS and exchange of data	Control Regulation <ul style="list-style-type: none"> Recording of catches by MS – Articles 33, 34, 35, 36, 37 Deductions and adjustments – Article 105 to new Article 107a (Council GA) Analysis and Exchange of data - Articles 109, 110 and 111 Protection of personal & confidential data – Articles 112 and 113 Website - Article 115 EFCA founding regulation Exchange and processing of data and information – Article 17
Sequence 13	Control Regulation	Control in the supply chain	<ul style="list-style-type: none"> Definitions of lot, batch, retail, traceability, direct sale – Article 4 Principle for control of marketing - Article 56 Lots of fishery and aquaculture products – Article 56a Traceability – Article 58 First sale – Article 59
Sequence 14	Control Regulation	Control of fishing capacity including Engine power	<ul style="list-style-type: none"> Fishing capacity - Article 38 Monitoring of engine power - Articles 39 and 39a Certification of engine power - Article 40 Verification of engine power and tonnage - Article 41 New Article 41a (Council GA) Verification of tonnage
Sequence 15	Control Regulation	Control of the landing obligation - CCTVs	<ul style="list-style-type: none"> Article 25a (Article 13 in Council GA and EP AMs 340 , 121 to 127, 327)
Sequence 16	Control Regulation and Baltic Multiannual Plan (MAP) (Article 5 of Commission	Margins of tolerance (MOTs)	<ul style="list-style-type: none"> MOT for the fishing logbook - Article 14(4) MOT for the transshipment declaration - Article 21(3) (EP AM 107) MOT for transport Article 68 (4) (d) – EP AM

Sequence	Regulations	Main topics	Provisions (of the concerned regulations)
	proposal)		205 <ul style="list-style-type: none"> Article 5 of Commission proposal (amendments to the Baltic Sea MAP Regulation (EU) 2016/1139)
Sequence 17	Control Regulation	Regionalisation	<ul style="list-style-type: none"> New Article 46a (Council GA)
Sequence 18	IUU Regulation	Safeguard measures	<ul style="list-style-type: none"> New Article 32a IUU Regulation (EP amendment 295)
Sequence 19	Amending Regulation (Article 6 of Commission Proposal)	Entry into force and date of application of some provisions (not part of other sequences)	<ul style="list-style-type: none"> Article 6 of Commission proposal – EP amendment 299

Empowerments to adopt delegated acts and implementing acts => **discussed with the provision or global discussion**

Date of application of some provisions => **Global discussion**
