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## **ADVICE**

# **on the European Commission's proposal on the revision of the EU Fisheries Control System**

**17 April 2019**

### **Background**

The NWWAC discussed the COM proposals (COM 2018 368 – 2018/0193(COD)) amending Council Regulation No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy. The NWWAC Focus Group on Control and Compliance discussed the proposal in detail at several meetings on 15<sup>th</sup> October 2018, 14<sup>th</sup> January 2019 and 13<sup>th</sup> March 2019. The advice was finalised by correspondence and approved by the NWWAC Executive Committee by consensus.

### **General remarks**

The NWWAC did not comment on articles related to market provisions under Title V CONTROLS IN THE SUPPLY CHAIN as this lies within the scope of the Market Advisory Council.

In relation to Sanctioning and Serious Infringements (Articles 89-92 in the COM's proposal), the NWWAC recognises that control and enforcement is a Member State competence. Recognizing the COM's recommendation to rely to a greater extent on administrative sanctions instead of criminal prosecution, the EU fisheries control system should have no prejudice the different legal systems in the EU Member States.

Note that in order to avoid repetition, the NWWAC comments related to the use of CCTV (see Article 25a) and weighing of fishery products (see Article 59a and 60) apply to all related articles.

## **Evaluation of COM proposal**

### **Article 1: Amendments to Regulation (EC) No 1224/2009**

The NWWAC notes minor changes of the definitions used in Art.1 and would like clarification on the removal of 'Community' in the description of the fishing vessel in e.g. paragraph 1(c) and the definition of 'catch vessel' in paragraph 1(k).

### **Article 6: Fishing licence**

The NWWAC would like further detail on the implementing rules that the COM anticipates Member States will adopt through implementing acts on the topics of issuing fishing licences as well as the required minimum information contained therein, as this is within the authority of the Flag State (paragraph 5).

### **Article 8: Marking and identification of Union fishing vessels and gears**

The NWWAC seeks clarification on the implementation across Member States of current Article 8 of the Control Regulation, more specifically in relation to small scale vessels operating within the 12 miles zones and Art. 9 of the Implementing Regulation (EU 404/2011) on the general rules for passive gear and beam trawls.

### **Article 9: Vessel monitoring systems**

Article 9.1 of the proposal states that each flag Member State shall ensure the continuous and systematic monitoring and control of the accuracy of the vessel position data. The NWWAC would like a clear definition of 'continuous' monitoring. Especially considering the many initiatives currently ongoing at Member State level to develop vessel monitoring system (VMS) for vessels below 12m.

The definition of 'continuous' monitoring could have implications in case of a technical or communication failure or non-functioning of the system and the frequency of transmission data in e.g. fishing restricted areas (see Article 22).

The NWWAC believes the frequency of VMS transfers should be defined in the implementing regulation.

The NWWAC welcomes the amendment to Article 9.4 which states that vessel position data shall also be made available to the Member State in whose ports a fishing vessel is likely to land its catches or in the waters of which the fishing vessel is likely to continue its fishing activities. However, the NWWAC seeks clarification what this means in practical terms: will each fishery monitoring centre have access to both VMS and ERS data of each vessel within their waters or does the COM or the European Fisheries Control Agency (EFCA) intends to be involved in data transmission?

To ensure a level-playing field, it is important that the same requirements must be met to the same extent by third country fishing vessels operating in Union waters. The NWWAC recommends that the requirements to transfer data to the coastal State as described in Article 9.4, should also be replicated in Article 9.6.

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

The NWWAC would like to re-iterate the request for clarification<sup>1</sup> on the purpose of having this provision included in the fisheries Control Regulation. The AC would like to point out that the AIS system is a freely available online system.

### **Article 12: Transmission of data for surveillance operations**

The NWWAC would like to know if the COM is aware of any potential impact the recent entry into force of the General Data Protection Regulation (GDPR) might have on data sharing and transmission.

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

The NWWAC would like to understand the rationale of the new requirement to add not only the date, but also the time of catches, in the fishing logbook as indicated in Article 2, paragraph d of the proposal.

The NWWAC would like information on how the requirement to provide estimated quantities of each species, or the number of individuals, for vessels of 12 meters length overall or more, per haul as opposed to only per fishing operation as suggested in paragraph g will be implemented, in particular on the removal of the 50kg threshold.

The NWWAC would like to re-iterate the request for clarification<sup>1</sup> on the purpose of the margin of tolerance of 10% per species as indicated in Article 14.4. The NWWAC notes that for small quantities, or on the occasion when fishing occurs in challenging circumstances (e.g. rough weather), the accuracy and precision of weighing equipment decreases. As a result, there may be differences when comparing quantities of landed catches, results of an inspection, and the estimates recorded in the fishing logbook beyond the allowed margin of tolerance. The NWWAC request that a practical solution is found concerning the margin of tolerance for logbook estimates, particularly in relation to the 10% level.

In relation to Article 14.9, the NWWAC would like to stress the importance of level playing field when the COM lays down detailed rules on the implementation of the margin of tolerance both for EU and non-EU vessels.

### **Article 15: Electronic submission of the logbook**

The NWWAC notes that the requirement to submit the electronic logbook would apply to all Union vessels, including vessels of less than 12 metres' length overall AND the exemption for vessels of less than 12 metres' length overall, who may not spend more than 24 hours at sea, has been removed. Those vessels must submit the data after the last fishing operation has been completed before entering port. The NWWAC emphasises that due consideration to safety issues must be given when implementing this requirement.

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<sup>1</sup> NWWAC opinion on specific issues relating to the implementation of the Control regulation (EU 1224/2009) – 7<sup>th</sup> April 2017 [Link](#)

### **Article 19a: Prior notification of landing in third country ports**

The NWWAC seeks clarification in relation to the requirement in Article 19a.1 for a Union vessel who wishes to land in a port outside Union waters to notify their flag Member State at least three days before estimated arrival. The NWWAC believes this requirement would unnecessarily overburden the vessels and authorities in cases where bi-lateral agreement exist e.g. between EU – Norway. As vessels landing in third countries must comply with the rules of the coastal state. Such rules may differ from the CFP.

Therefore, the NWWAC recommends adding the following words to Article 19a.4:

... there are reasonable grounds to believe that the fishing vessel is not complying with the rules of the common fisheries policy, *or where relevant*, the competent...,

### **Article 24: Electronic transmission of landing declaration data**

The NWWAC welcomes the amendments in Article 24.3 which requires the flag Member State to forward landing declaration data to the competent authorities of the Member State where the catch was landed immediately upon receipt. The NWWAC believes such transmission should be done automatically and therefore suggests the following rephrasing: ...the flag Member State *shall automatically forward* the landing declaration data ....

### **Article 25a: Control of the landing obligation**

The NWWAC at several previous meetings and in earlier advice <sup>1,2</sup> highlighted that the use of Remote Electronic Monitoring tools, in particular CCTV, as a measure to control the Landing Obligation is discussed in several articles of the new proposal on the Fisheries Control System. While the NWWAC agrees with the requirement to ensure effective control of the Landing Obligation, the use of Remote Electronic Monitoring systems should be based on pre-defined risk categories. These risk categories need further discussion. The NWWAC want to emphasise that the use of type of Remote Electronic Monitoring should be chosen based on cost effective and appropriateness to the vessels in question. Such tools could include: observers, closed circuit television (CCTV), VMS, sea, air and onshore controls, amongst others.

The NWWAC<sup>2</sup> requests that it is involved in the process of determining sensible programs and methodologies and in the evaluation process.

### **Article 33: Recording of catches and fishing effort**

The NWWAC is aware of different interpretations between Member States of the use and allocation of catches taken in the framework of scientific surveys as per Art. 33.6. To ensure a level-playing field, the NWWAC recommends that further clarity is provided regarding such catches.

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<sup>2</sup> NWWAC Response to EC proposals on the EU Fisheries Control System 29 January 2018 ([link](#))  
NWWAC Recommendations on the proposals on the EU Fisheries Control System  
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### **Article 38: Fishing capacity**

The CFP aims to achieve a balance between fishing fleet capacity and fishing opportunities. Therefore, a fishing fleet capacity ceiling is specified for each Member State, expressed in both engine power (kilowatts (kW) and gross tonnage (GT)). To ensure compliance with both the capacity ceiling and the applicable management measures, Member States require reliable and up-to-date information on the capacity and technical characteristics of their fishing vessels. The current Fisheries Control System (EU 1224/2009) defines the rules for the monitoring, certification and verification of engine power in Articles 39 to 41 respectively.

However, the Court of Auditors<sup>3</sup> found that Member States did not sufficiently verify the accuracy of their fleets capacity and found a significant number of discrepancies between the vessel details recorded in the fleet register and those contained in the supporting documents.

Based on these findings, the NWWAC<sup>2</sup> request clarifications on the need for additional methods to measure engine power as described in Article 39.a *Continuous monitoring of engine power*. Recognising the need to maintain the balance between fleet capacity and fishing opportunities, the NWWAC recommends that adjustments and management of the capacity as set out in Art 22 of the CFP is the way forward.

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

The NWWAC emphasises that any area restricted for fishing 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, 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 55: Recreational fisheries**

Article 55.1 specifies that Member States must ensure recreational fisheries in their territorial waters are conducted in a manner compatible with the objectives of the CFP. For this purpose, Member States must put in place a registration or licensing system to monitor the activity. The NWWAC notes that several EU countries already have a registration system in place with a monetary element, e.g. Denmark, Spain, Portugal, and a registration system free of charge in Italy.

To add clarity, the NWWAC proposes in Article 55.2, paragraph (b) that registration or licensing system should be put in place for charter vessels used in recreational fisheries.

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<sup>3</sup> Court of auditors special report no 08/2017 EU fisheries control more effort needed p20-23

Following the recommendations above, the NWWAC proposes the following amendments to Article 55.5:

- Paragraph c: *the tracking of skippered vessels ('~~charter boats~~'), which carry passengers for the business of recreational fishing and*
- Paragraph d: *the control and marking of gears used for recreational fisheries **where relevant**.*

The amendment in paragraph c will require the specification for the term skippered vessels in Article 4. The NWWAC highlights that the definition should clarify that a skippered boat or vessel takes passengers to sea to fish recreationally.

#### **Article 59a: Weighing systems and Article 60: Weighing of fishery products**

The NWWAC seeks clarification in relation to these new proposals and their added value taking into account that there are strict measures to weigh fishery products in the existing control regulation.

#### **Article 68: Transport of fishery products and completion and submission of the transport document**

The NWWAC would like to emphasise that the transporter (e.g. truck driver) cannot be held responsible for the accuracy of the transport document and suggest removal of Art. 68.3

Art 68.4, paragraph (d)

The NWWAC suggests a margin of tolerance is allowed to cover any weight change<sup>4</sup> during the transport of fish, especially when considering the longer travel times in cases where the final destination of the landings is in another Member States that where the vessel landed and weight the catches.

#### **Article 76: Inspection report**

The NWWAC notes that Art 76.2 does not specify a timeframe by which the operator or master will receive the findings of any inspection. The NWWAC would recommend a procedure analogous to Norway where the inspector provides the master a report at the end of the inspection, on the condition that it will not impair the security or safety of the inspector. The master is presented with the opportunity to comment on the report and a copy of the findings are kept by both the master and inspector as proof that the catch was inspected.

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<sup>4</sup> Jorpeland G *et al.* (2015) Effects of filleting method, stress, storage and season on the quality of farmed Atlantic cod (*Gadus morhua* L.). *Aquaculture Research*, 46, 1597-1607.

Rotabakk BT *et al.* (2014) Effect of blood removal protocol and superchilling on quality parameters or prerigor filleted farmed Atlantic cod (*Gadus morhua*). *Journal of food science*, 79 (5).

### **Article 77: Admissibility of inspection and surveillance reports**

The NWWAC agrees with the article as drafted. However, the NWWAC notes that proceedings after alleged infringements and sanctions differ throughout the European Union: for the same infraction, the sanction may be either administrative or penal depending on the MS involved and in either case the level of sanction may differ between MS and may also differ between fleets dealt with in a MS. The NWWAC<sup>5</sup> reiterates its recommendation to standardise this across MS.

### **Article 79: Union inspectors**

The NWWAC would like further clarification why a Union inspector would only have enforcement power within the territory of their Member State of origin as suggested in Art 79.5.

### **Article 89a: Sanctions**

When determining sanctions, Member States must take into account the gravity of the infringements including the level of environmental damage done and the value of the prejudice to the fishing resources. The NWWAC would like a clear definition of the terms 'prejudice to the fisheries resources' and 'environmental damage'.

### **Article 90: Serious infringements**

The NWWAC welcomes the list with infringements as recommended in previous advice<sup>1,2</sup>, to aid equitability between Member States and provide a level-playing field for EU operators. However, the NWWAC would like to understand the requirement to list both the serious infringements (paragraph 2) as well as the serious pursuant (paragraph 3).

In relation to Art 90.2 (c) '*concealing, tampering with or disposing of evidence relating to an investigation*' and Art 90.2 (d) '*obstructing the work of officials or observers, in the exercise of their duties*'. The NWWAC would like clarification on the definitions of '*concealing*' as stated in Art 90.2 (c) and '*obstruction*' as outlined in Art 90.2 (d).

Taking into account both the involvement of Member States in verifying the infringement and the NWWAC opinion regarding the validity of measuring engine power (see Art 38), the NWWAC suggests that the infringement outlined in Art 90.2(q) should be considered a serious pursuant (paragraph 3).

### **Article 91: Immediate enforcement measures for serious infringements**

The NWWAC supports the implementation of immediate enforcement measures for serious infringements, anyhow these should be without prejudice to the legal system of the different Member States.

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<sup>5</sup> NWWAC Response to report of the NWW MS Control Expert Group 2 December 2016 ([Link](#))  
NWWAC Recommendations on the proposals on the EU Fisheries Control System  
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The NWWAC recommends changing the word 'suspected' in paragraph 1 as the natural or legal person still has to be found guilty.

The NWWAC<sup>6</sup> reiterates its recommendation to the MSs to take the initiative for an extensive standardisation of control methods, warnings, follow-up, and ultimately sanctions imposed to minor and serious offences in order to ensure equitable implementation (i.e. a level-playing field) as this is one of the objectives of the EU fisheries control policy (EC 1224/2009 preamble (4),(9)).

### **Article 91a: Sanctions for serious infringements**

Paragraph 1 defines the minimum and maximum values of the fines in case of established serious infringement. The NWWAC would like more clarity in relation to

- To whom the fine will apply to: the master or owner of the vessel or both, and
- how the minimum and maximum values of the fine are defined.

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

Further clarification is needed to resolve the ambiguity regarding the assignment of points in cases where the owner and master of the vessel are the same or a different natural person. If the master and licence holder are the same person, the NWWAC emphasises that this person cannot get double points for the same infringements.

For example,

- According to Article 92.2 a natural person who has committed or held liable for a serious infringement shall be appointed a number of points according to the system set up by Member States (Article 92.1). Article 92.4 proposes that the master of a vessel is assigned the same number of points as the holder of the fishing licence.  
The NWWAC would like to know how the number of points will be assigned in the case where the master and license holder are the same natural person. Will this person get double points?
- Article 92.3 states that the assigned points remain attached to the license holder in case the vessel is sold, transferred or otherwise changes ownership after the date of the infringement. The NWWAC would like to know if points associated to a master of a vessel remain associated to the master if he transfers to another vessel. If so, the master can lose his right to command a fishing vessel when his accumulated points have reached a total of 90.
- The NWWAC seeks clarification on the transfer of points from the master and the owner of a new vessel. The NWWAC also recommends that a provision is provided that obligates the master to inform the new vessel owner of the points associated with the master in question.

According to Article 92.3 the new holder of the fishing licence will receive the points associated with the fishing vessel despite this new owner not committing or taken part in the infringement.

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<sup>6</sup> NWWAC Response to report of the NWW MS Control Expert Group 2 December 2016 ([Link](#))  
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The NWWAC seeks clarification on the following issues:

- Why would a fishing vessel be eliminated from any commercial exploitation of marine biological resources once the total number of points equals or exceeds 90 points (Article 92.6).
- Regarding the proposed change in paragraph 92.8 on the deletion of points after three years.
- in relation to the change from flag State to coastal State in Article 92.9.

The NWWAC recommends that points can be deleted through delegated acts (Article 92.13 paragraph d) by allowing vessels to volunteer in e.g. scientific project that improve data quality or selectivity trials.

The NWWAC recommends expanding the application of Article 92.13 paragraph d, by maintaining the option to delete points through participation in scientific programs (i.e. project to improve data quality or selectivity) or by following specific training as is currently offered by Article 133 of the implementing regulation (EU) 404/2011.

#### **Article 92a: Liability of legal persons**

The NWWAC would like more detail on paragraph 3, as it may imply that the natural person is guilty by association. As an example, would an association who provides a buyer to a master of a vessels expected of an offense be perceived guilty by association?

To add clarity, the NWWAC recommends the following amendment: *Liability of a legal person shall not exclude proceedings against **knowingly** natural persons, as referred to in paragraph 1, who are perpetrators, instigators or accessories in the infringements concerned*

#### **Article 93: National register of infringements**

The NWWAC support the introduction of transparency requirements by making information on the implementation of the Control Regulation, such as infringements and sanctions, publicly available.

In relation with the National register, Member States should annually publish aggregated data on the number and types of inspections, number of infringements detected and reported, and type of follow-up actions (simple warnings, administrative sanctions, criminal sanctions, immediate enforcement measures, number of penalty points administered).

#### **Article 109: General principles for the analysis of data**

In relation to Article 109.2 (b) viii data on engine power and Article 109.2 (b) x on CCTV, the NWWAC re-iterates the comments under Article 38 and Article 25a respectively

### **Article 110: Access to, storage and processing of data**

Similar to Article 12, the NWWAC would like to know if the COM is aware of any potential impact the recent entry into force of the General Data Protection Regulation (GDPR) might have on data access, storage and processing.

### **Article 112: Protection of personal data**

The NWWAC questions the need to store personal data up to 5 years as referred to in paragraph 3, especially if the date is not related to a complaint, an infringement, an inspection, a verification or an audit or on-going judicial or administrative proceedings.

### **Article 118: Reporting obligations**

In line with the improvements in the transparency requirements suggested for article 93, the NWWAC considers that Member States should report every 2 years, instead of the 5 years reflected in the current regulation, on the implementation of the Control Regulation. These reports should be available in the Commission's website. In addition, the NWWAC also recommend that the Commission use the information submitted by the Member States to prepare biannual communications to the European Parliament and to the Council on the implementation of the enforcement provisions of the Control Regulation.

### ***Amendments to Regulation (EC) No 768/2005***

As indicated in the NWWAC advice of January 2018<sup>7</sup>, the NWWAC re-iterates its support for the increased role and responsibility of the EFCA.

### ***Amendments to Regulation (EU) No 2016/1139***

### **Article 6: Entry into force**

Article 6 defines that the Regulation shall apply 24 months after date of entry into force. The NWWAC highlights the need to adopt delegated acts, required to comply with the regulation, at the start of this period to allow Member States and industry to adapt and enquire additional technology and equipment if needed.

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<sup>7</sup> NWWAC advice on the policy options proposed by the European Commission on the revision of the EU Fisheries Control System (29 January 2018) [Link](#)