

Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy'

COM(2008) 721 final — 2008/0216(CNS)

(2009/C 277/11)

Rapporteur: **Mr ADAMS**

On 15 December 2008, the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, on the

Proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy

COM(2008) 721 final - 2008/0216 (CNS).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 17 April 2009. The rapporteur was Mr ESPUNY MOYANO.

At its 453rd plenary session, held on 13 and 14 May 2009 (meeting of 13 May 2009), the European Economic and Social Committee rejected the Section's opinion and adopted the following counteropinion drawn up by Mr Adams by 98 votes against 75 and 11 abstentions.

1.1. The EESC supports the substantial reform of the fisheries control system by the Commission and recognises it both as a centrepiece of the Common Fisheries Policy (CFP) and as a highly relevant and urgent restructuring which will improve the CFP's effectiveness in advance of the proposed major reform.

1.2. The EESC believes the current fisheries control system in the EU suffers from substantial shortcomings. It is inefficient, expensive and complex and does not produce results. This failure has significant consequences for the sustainability of fisheries resources, the fishing industry, the regions dependent on fishing and the environment. The EESC notes this view is also shared by the Commission.

1.3. In particular the CFP has generated an attitude of delay, prevarication, reluctant implementation or non-compliance by certain stakeholders. The reform of the control system is designed to bring about a change in this antagonistic, non-compliant culture. It reflects the new approach outlined in the April 2009 Green Paper on the Reform of the Common Fisheries Policy and is therefore a test of stakeholders' willingness to commit to change.

1.4. Over 75 percent of the world's fish stocks are either fully exploited or overexploited. Eighty-eight percent of EU stocks are fished beyond their maximum sustainable yield.

1.5. In the EU, the present control system is inadequate and undermines the reliability of the basic data on which scientific advice is formed. Due to unreliable data, unsustainable catch levels are continuing. Fraudulent practices are hard to detect and penalties imposed are often much lower than the potential profits to be made from overfishing. The Commission also suffers from a lack of legal tools which hamper its ability to react quickly and effectively when it detects a problem in the performance of national control systems. At the same time, new technologies offer a potential that is not used to the full.

1.6. The EESC believes the new system would establish a global and integrated approach to control, focusing on all aspects of the Common Fisheries Policy and covering the whole chain of catch, landing, transport, processing and marketing – from catch to consumer.

1.7. The EESC considers that the Commission has fulfilled its consultation responsibilities with key stakeholders, has produced a well-researched impact assessment and is right to press for immediate reform and not to defer action until the future of the Common Fisheries Policy post-2012 is determined.

Brussels, 13 May 2009.

*The President
of the European Economic and Social Committee*
Mario SEPI

APPENDIX

The following Section Opinion was rejected in favour of counteropinion adopted by the assembly but obtained at least one-quarter of the votes cast

1. Conclusions

1.1. The EESC recognises the need to simplify the control system for ensuring compliance with the Common Fisheries Policy (CFP) and agrees with the principles of the proposed reform.

1.2. However, the Committee considers that now is not the best time to carry out the reform, as the debate on the future of the CFP post-2012 has only just begun and it is very likely that there will be changes in the CFP that will have a direct effect on the control system. The EESC therefore recommends that first of all a thorough review of the basic elements of the CFP is carried out, together with a review of the relevant management models, so that the new control system methods can then be derived from this basis.

1.3. The Committee is disappointed that the Commission, in its haste to embark on the reform, has not carried out sufficient consultation of stakeholders. The EESC believes that for the reform to be successful, the economic and social players need to be involved to a greater degree.

1.4. The Committee also believes that the changes to the control system which are set out in the proposal actually significantly increase the number of obligations on fishing vessels and fisheries administrations, instead of simplifying the control system. The Committee therefore recommends that there be a sufficient transitional period.

1.5. The EESC considers that the socio-economic consequences of these measures have not been properly assessed.

1.6. To ensure that the measures are complied with, the EESC suggests that the Commission publishes an appendix detailing the different deadlines and obligations for each type of vessel.

1.7. As far as specific technical issues are concerned, the EESC asks the Commission, the Council and the European Parliament to take into account the points made under the specific comments section of this opinion.

2. Introduction

2.1. On 14 November 2008 the European Commission published three documents on the reform of the CFP control system: the Communication from the Commission to the European Parliament and the Council on the proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the CFP ⁽¹⁾, the principal for a Regulation itself ⁽²⁾, and the impact assessment ⁽³⁾.

2.2. The Commission believes that the control system established in 2002 has significant shortcomings that impair its overall effectiveness. The control system is ineffective, expensive, complicated, and does not produce the intended results. The Commission is therefore proposing to carry out a substantial reform of the CFP control system.

2.3. The Commission states that the main objective of the reform is to establish a Community system to inspect, monitor, control and ensure compliance with the rules that create the conditions required to effectively implement the CFP.

2.3.1. More specifically, the Commission states that its proposal for a reform seeks to achieve improvements through:

- *simplifying the legal framework*. The proposal sets out common control standards for all the CFP rules. It establishes the principles: the details will be set out in a single implementing regulation;
- *expanding the area of application*. The proposal tackles areas which have previously been neglected (transport, markets, traceability) and deals with others in which there is an increasing need for control (discards, recreational fishing, marine protected areas);

⁽¹⁾ COM(2008) 718 final.

⁽²⁾ COM(2008) 721 final.

⁽³⁾ SEC(2008) 2760.

- *establishing equal conditions for control.* Introducing harmonised inspection procedures, together with harmonised fines to act as a deterrent, will ensure fishermen are treated fairly, regardless of where they fish, and will increase confidence in the system as a whole;
- *rationalising the approach of the control and inspection procedures.* The systematic use of risk management procedures will allow Member States and the Commission to ensure their resources are targeted at areas where there is a greater risk of infringements;
- *reducing the administrative burden*
- *applying the CFP rules more effectively.* The Commission will take a macro-management approach, focussing on monitoring and checking that Member States comply with the rules.

2.4. The proposal for a Regulation complements the IUU Regulation ⁽⁴⁾ and the Regulation concerning authorisations for fishing activities of Community fishing vessels outside Community waters ⁽⁵⁾. These three Regulations comprise the new control framework.

2.5. The Commission's aim is for the new Regulation to come into force on 1 January 2010.

3. General comments

3.1. The EESC recognises that the success of the CFP will be determined by the application of an effective, global, integrated and non-discriminatory control system 'from net to plate' which will ensure that living aquatic resources can be exploited in a sustainable way.

3.2. The Committee also believes that there is a need to reform and thereby improve the current Community control system, and agrees with the general principles of the proposal.

3.3. However the EESC believes that the Commission should think long and hard about whether now is the best time to carry out this reform. In 2008 the Commission opened up the debate on the future of the CFP post-2012, and the basic elements of the policy will be revised over the next few years. The EESC believes that it should be the new CFP that determines how the control system is reformed.

3.4. The main instrument for managing fishing in the current CFP is the TAC ⁽⁶⁾ and quota system, yet this system has been challenged in different contexts ⁽⁷⁾. Given that one of the Regulation's main objectives is to ensure that the TAC and quotas assigned to the Member States are complied with, and given that the institutions have recognised that this system clearly needs to be improved, it would seem to make more sense to revise these management systems before reforming the control system. In any case, the EESC certainly recommends that the basic aspects of the CFP are thoroughly revised, the different management models are reviewed, and the new control methods are adapted to these findings.

3.5. The Committee is disappointed that the Commission has presented the whole legislative package – the Communication, the proposal for a Regulation and the impact assessment – all at the same time. Usually the Commission starts off by presenting the Communication so that it can be used to inform and guide discussions on the proposal. The EESC believes that for the reform to be successful, the economic players affected by the issue should be involved and engaged in in-depth discussions. Certainly, a reform on the scale of this proposal cannot be rushed through.

3.6. The proposal for a Regulation significantly increases the number of obligations on fishing vessels and fisheries administrations. The EESC believes that this situation could bring about serious practical problems as neither the Member States nor the Commission have adequate structures or enough staff to collect and process all the information that the proposal requires. The proposal also increases the obligations for economic players. The Committee considers that given the current economic crisis, increasing the administrative burden on Member States and economic players could be inappropriate: it could have a negative impact on businesses and jobs, and a particularly negative effect on the 10-15 metre fleet.

⁽⁴⁾ 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).

⁽⁵⁾ Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters (OJ L 286, 29.10.2008).

⁽⁶⁾ Total Allowable Catches.

⁽⁷⁾ Special report No 7/2007 of the Court of Auditors of the EU.

3.7. The EESC believes that the simplification process should be carried out gradually as reviewing the legal framework and subsequently applying the changes will be complicated, introducing the new systems will be expensive, and initially people will be unfamiliar with the new systems. As the changes which have been proposed are so far-reaching, the Committee believes that a more in-depth debate is required over a longer period of time. The Committee therefore believes that Article 16 should establish a transition period which would ensure there is enough time to adapt to the changes in control legislation.

3.8. The EESC believes that a culture of compliance should be established not by increasing the number of control and sanction procedures but rather through cooperation and agreement between the parties involved. Having a simpler set of rules that can be easily understood by stakeholders would foster compliance.

3.9. The Commission intends to take on greater powers for the control system. The EESC believes that account should be taken of the balance between the Council and the Commission to avoid potential conflict over areas of competence in the future.

3.10. The EESC believes that the Regulation should consider the possibility of using surplus quotas, which could be given to other Member States to help make their fisheries more profitable.

4. Specific comments

4.1. The EESC believes that the fishing authorisation issued to Community fishing vessels should not be limited to Community waters, and therefore believes that the words 'in Community waters in general' should be deleted from Article 4(8).

4.2. Regarding Article 4(10) the Committee believes that the definition of Marine Protected Areas which are located in Community waters and have an impact on fishing activity should also set out a Community procedure for the creation, use, control and monitoring of Marine Protected Areas.

4.3. Article 4(17) establishes the definition of processing, which includes cleaning, gutting, icing or freezing. The EESC believes that the definition of processing should only be used to refer to products where the organoleptic characteristics of the marine resources have been changed, and should not cover the processes required to preserve the product – which are intended to ensure that fish products are safer for the consumer. The Committee therefore suggests that these activities should be deleted from the definition of processing.

4.4. The EESC believes that Article 7(f) should make reference to high seas areas, which are not regulated by a Regional Fisheries Management Organisation.

4.5. The Committee believes that vessels of between 10 and 15 m. length overall should not be required to carry the device referred to in Article 9) which allows vessels to be automatically located and identified through the Vessel Monitoring System by transmitting position data at regular intervals. The activities of this section of the fleet are limited in any case: the nature of these vessels means that they have to fish in areas near to the coast which can be easily monitored. The cost of installing this system would be significant and disproportionate for this section of the fleet, which is made up of a large number of small and medium-sized businesses that employ a large number of people.

4.6. The EESC believes that the rules set out in Article 14 on the logbook for Community vessels are excessive, as checking them will be extremely bureaucratic. This requirement should therefore only apply to fisheries where clear reasons have been given to justify the application of the provisions.

4.6.1. Article 14(1) states that the quantities of each species discarded at sea shall also be recorded in the logbook. The Committee considers that only catches above a certain weight, e.g. 50 kg, should have to be recorded in the logbook.

4.6.2. Article 14(3) establishes that the permitted margin of tolerance in estimates recorded in the logbook of the quantities in kilograms of fish retained on board shall be 5 %. The EESC believes that it is already difficult to meet the current margin – which at its strictest is set at 8 % in the recovery plans. As the new margin of tolerance is too low it will be highly bureaucratic and cause difficulties for fishermen who will not be able to comply with it, resulting in a large number of penalty proceedings. This goes against the aim to simplify the monitoring systems and the Committee therefore recommends that the new margin should not be applied.

4.6.3. The EESC considers that the conversion factors set to convert stored fish weight into live fish weight (which differ between Member States and therefore have an impact on calculating the catches of each country) should not only be based on an average of the values applied in the Member States, but should also take the individual circumstances of each fishery into account. The conversion factors should also take account of the effect that converting national conversion factors into Community factors could have on the principle of relative stability.

4.7. The Regulation on the use of electronic recording ⁽⁸⁾ does not state that this method should be applied to vessels of less than 15 metres in length. The EESC believes that vessels between 10 and 15 metres long should not be included until the authorities of the Member States have assessed how the rule would work in practice for vessels over 15 metres long, together with the overall impact, and until practical experience has been accumulated. It should be noted that electronic recording will not be compulsory until 1 January 2010 for vessels over 24 metres and 1 July 2011 for vessels over 15 metres. Moreover, Article 15 of the proposal does not include the derogations in force regarding electronic recording procedures for vessels over 15 metres. The Committee therefore asks that the two sets of rules be made consistent.

4.8. The EESC believes that the prior notification requirement set out in Article 17 should only apply in situations where it is justified. At present, prior notification is only required when vessels are carrying on board species which are included in recovery plans, thereby avoiding additional work which often will not provide any useful information (as is the case for zero catches). The Committee believes that the requirement to give notification of catches should be based on a minimum representative quantity.

4.9. The Committee believes that the master of the vessel or his/her representatives should always give prior notification to the flag Member State, rather than having to notify the coastal Member State or the Member State where the fish is landed. Currently, vessels always pass on information to the communications centre in the flag Member State, which then passes this information on to the other Member States ⁽⁹⁾.

4.10. The EESC considers that prohibiting transshipments at sea, as set out in Article 18, could cause serious problems for some types of fishing, as it would make the affected sections of the fleet less economically viable. Moreover, the fact that it is prohibited to tranship fish to be processed and frozen at sea or near the fishing grounds could compromise the quality of fish for consumers.

4.11. Regarding Article 21, the EESC believes that the requirement to transmit landing declaration data by electronic means within two hours of landing does not allow enough time and could give rise to compliance problems. The Committee therefore suggests that the requirement should be changed to 24 hours, taking into account the fact that the current deadline is 48 hours.

4.12. The Committee considers that Article 28 should set out the procedures to ensure that surplus, unused quotas belonging to a Member State can be used by other Member States under certain conditions, as well as procedures for enabling a Member State to carry over surplus quotas to the following year. As far as corrective measures are concerned, when a fishery is closed, the mechanisms for compensating the Member State should be rapid and easy to apply.

4.13. The EESC believes that Article 33 could cause problems for the sections of the fleet that catch small pelagic species and transfer their catches to freezer vessels in port for processing. Article 33 could also affect the parts of the fleet that land their catches in a Member State other than their home Member State, and have these catches transported by lorry to ports in another Member State, where they are then put on the market.

4.14. As established in Article 35, the EESC agrees that species subject to a recovery plan should be stowed in different boxes from the rest of the catch and labelled accordingly. However the Committee believes that stowing the boxes separately would not mean that the catches could be monitored more effectively, as the boxes containing species subject to a recovery plan will in any case have a label indicating the FAO code of the species.

4.15. The EESC considers that the registration of discards (Article 41) is essential for preserving resources and improving the quality of scientific research, especially in mixed fisheries. The Committee calls for discards to be reduced to ensure sustainability. However it believes that the requirements for registering discards are disproportionate and incompatible with fishing practices. The requirements would create an excessive amount of work which could compromise safety on board, the wellbeing of fishermen, or health standards. The expression 'without delay' is too vague and could create legal uncertainty.

4.16. The Committee believes that the real-time closure of fisheries (Articles 43 and 46) is a delicate issue and an in-depth assessment of the measure is required before it is implemented. Given that the proposal for a Regulation on technical measures ⁽¹⁰⁾ will provide a specific legislative framework, the EESC believes it would make sense to wait until the analysis is complete. In any case, the procedures for closing and re-opening a fishing area should be simple and flexible. The Committee considers however that the procedure for temporarily re-opening closed areas, which requires vessels to carry a scientific observer on board, is not ideal, especially if the intention is to establish a swift procedure which does not put fishermen at an unnecessary disadvantage.

⁽⁸⁾ Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing, OJ L 409, 30.12.2006.

⁽⁹⁾ Commission Regulation (EC) No 1077/2008 laying down detailed rules for the implementation of Regulation 1966/2008, OJ L 295, 4.11.2008.

⁽¹⁰⁾ Proposal for a Council Regulation concerning the conservation of fisheries resources through technical measures. COM(2008) 324 final.

4.17. The Committee believes it is unreasonable for Article 47(3) to establish that catches of species subject to a multi-annual plan by recreational fishermen shall be counted against the relevant quotas of the flag Member State, as this rule would set professional fisherman – for whom fishing is their livelihood – at a disadvantage. The Committee also believes that recreational fishing should be regulated and monitored appropriately in all Member States to protect fishing resources.

4.18. Article 84 introduces a penalty point system to penalise fishermen who infringe the CFP rules. The Committee believes that this system is inappropriate, first of all because it is discriminatory – fleets from third countries would not have to comply with this system yet provide more than 60 % of the fish consumed in the EU – and secondly because little or no consideration is given to the principle of proportionality – withdrawing a fishing permit will effectively close down the fishing business involved, resulting in job losses.

4.19. The Committee believes that the financial measures established in Article 95 are excessive. Suspending and cancelling Community financial assistance to a Member State because it cannot meet its obligations as set out in the Regulation would seriously penalise fisheries sector operators.

4.20. Article 96 provides for the closure of fisheries when Member States fail to comply with the objectives of the CFP. The Committee considers that the use of very vague terms in this Article could be misleading. The EESC believes that fisheries should only be closed under exceptional circumstances, and then only on reasonable grounds when the facts have been confirmed. The exact conditions under which this measure will be implemented must be clearly defined.

4.21. The Committee is concerned about the difficulty of ensuring confidentiality and professional and commercial secrecy, given the quantity of e-communications required, along with the number of people exchanging the information, and the large number of communication, positioning and identification devices that are necessary.

Voting:	For: 75	Against: 98	Abstentions: 11
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