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DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES  
THE DIRECTOR-GENERAL

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**Subject: NSRAC advice on the reform of the control policy**

Dear Mr Andersson,

The Commission thanks the NSRAC for its comments on the proposed control regulation. I would like to make a few remarks to explain the measures proposed and to put them into the right context.

The Commission shares the conclusions of the Court of Auditors that the current system has not produced the expected results. Our proposal is an attempt to draw lessons from the past and make the best possible use of modern technologies in order to better monitor fisheries, both as a whole and individually. The proposal addresses the current weaknesses in the management of control-related data, inappropriate follow-up of infringements by individuals and insufficient application of the Common Fisheries Policy (CFP) rules by Member States. It does so taking into account the structural overcapacity affecting the Community fleet as well as economic constraints, which both have a bearing on compliance with CFP rules.

In view of the fundamental shortcomings of the current control system as identified in Special Report No 7/2007 of the Court of Auditors, there is no time to lose for the reform. This does not rule out any later adjustments which might become necessary as a result of the forthcoming reform of the CFP.

Since publication of the proposal in November last year, the Commission has engaged in constructive dialogue with other European institutions, the Member States, the industry, and other stakeholders. The Commission is now exploring ways to address the issues raised in this process.

With this in mind, I would like to comment on the key issues you mention:

Article 4, points 7 and 8;

The Commission intends to redefine the concepts of fishing licenses and fishing authorisations. A new definition of fishing authorisations will only deal with specific fishing activities and therefore reflect the current concept of a special fishing permit. They will only be necessary where fishing activities are subject to special conditions.

Article 4, point 10: Marine protected area;

The original text did not fully outline the intention of the Commission to limit the measures to those areas clearly identified by the Council as being subject to fishing restrictions. Consequently, the definition of a 'marine protected area' will be replaced by the one of a 'fishing restricted area' and the applicable provision will be amended accordingly. This will include foreseeing a transmission interval for VMS data every 30 minutes inside the zone instead of a real-time transmission and giving up the tool of a security zone around such an area.

Article 9: Vessel monitoring system;

As regards the technical devices used for monitoring, the proposal must take into account the impact certain parts of the fleet have on the resources. We are considering replacing the current approach of a VMS for most vessels above 10 m with one foreseeing a VMS for all vessels above 12 m as well as extending this to vessels above 8 m if towed gears are used. In this regard, it should also be mentioned that the Commission is planning to provide up to 95% of Community financial assistance for any new technologies introduced or extended by this regulation.

Article 14: Logbook;

When determining the obligations for fishermen to record catches, due consideration must be given to the stocks concerned. In view of the need to ensure full compliance with the rules of multi-annual plans, a more accurate recording for catches of stock is needed. This must be achieved whilst keeping in mind that the Commission wants to stick to the threshold of 15 kg for catches of stocks under the multi-annual plan but is prepared to reintroduce the threshold of 50 kg for other species.

As to the margin of tolerance, the Commission has listened carefully to the views of the industry and considers a general margin of tolerance of 10% and 8% for stocks under a multi-annual plan (as currently applied in most multi-annual plans) as a possible feasible solution.

Article 17: Prior notification and article 20: Authorisation to land;

In line with the new approach for a VMS and the impact which different fisheries have on the resources, the scope of the provision will be modified in order for it to be applicable to all vessels above 12 m and all vessels above 8 m using towed gears, thus excluding nearly 70% of the fleet. Paragraph 4 of this article specifically offers the possibility to exempt certain categories of fishing vessels from the obligation of a prior notification which will allow for special situation to be given to inshore vessels. As to bad weather, article 17 paragraph 1 specifically mentions that the competent authorities may give permission for an earlier entry.

#### Article 18: Transshipment;

The future text of the draft proposal will clarify that pair trawling activities are not to be considered as transshipment. Furthermore, the areas where transshipments will be allowed will be extended to places close to the shore by way of accommodating to the operational needs of certain parts of the fleet.

#### Article 21: Landing declaration;

The Commission has studied the views of the industry and has come to the conclusion that a difference should be made between vessels not equipped with electronic recording and reporting devices and those that have already installed them on board their vessels., In the case of the unequipped vessels, a deadline of 24 hours after the completion of the landing seems most appropriate in comparison to 6 hours for those already equipped.

#### Article 28 paragraph 2: Corrective measures;

There seems to have been a misunderstanding as to the wording of this paragraph as it only provides for the possibility to make deductions from the fishing opportunities of any Member State which has overfished and does not affect the fishing opportunities of the Member States that have respected their catch limits for the relevant stock. The concept is not new as it is already contained in article 21, paragraph 4 of Regulation (EEC) No 2847/93 which is taken up in the text of the proposal.

#### Article 34: Designated ports;

As to the designated ports, the proposal allows the Council to establish a threshold above which landings have to take place in such ports. The concept of obliging fishermen to land their catches above a certain threshold in designated ports is not new. Many multi-annual plans already contain such a threshold and the obligation to land in such ports. The new element of the proposal is to specify the requirements for the designation of ports to ensure that they meet their purpose, i.e. established landing times and places and a certain significance for the fishery in question. These requirements are necessary in order to ensure an efficient control of those stocks that are subject to special management measures which will only bear fruit if respected by all. They are also necessary in order to guarantee a similar level of control in all the Member States concerned. The specific situation of small vessels is taken into account when establishing the threshold for obligatory landings in a designated port. These requirements will not apply to all stocks subject to multi-annual plans but only to those stocks upon decided by the Council. Tidal ports are not by definition excluded from being designated as ports as long as the general requirements for such ports are met.

In this context, it has to be stressed that if the concept of a designated port is not to be undermined, then ports should only be designated for the purpose of fisheries control.

The Commission is prepared to develop the original idea behind the designated port further and allow landings to take place in ports which despite not meeting the threshold of 5% for the stock in question, have been designated for other stocks that are subject to multi-annual plans.

#### Article 35: Separate stowage of recovery species;

Provisions on the separate stowage of recovery species are a common feature of most multi-annual plans (e.g. Article 14 of Regulation (EC) No 676/2007, Article 8 of Regulation (EC) No 509/2007, Article 10 of Regulation (EC) No 388/2006, Article 12 of Regulation (EC) No 2166/2005, Article 11 of Regulation (EC) No 811/2004). Separate stowage is a useful tool to clearly identify catches of stocks subject to a multi-annual plan. The Commission recognises the specific situation of small vessels and fisheries for pelagic species and will therefore amend its proposal and exempt vessels under 12 meters in overall length or under 8 meters in overall length using towed gears and fisheries on pelagic stocks.

#### Articles 41: Registration of discards;

The Commission holds on to the need to record data on discards as an important way to understand their magnitude and impact on the environment. This information is important for the political and social stakeholders in the future debate on how discards should be addressed. As the same principles are to apply for the registration of discards and catches in general, the section on the monitoring of the reduction of discards will be deleted and a relevant paragraph will be added to the provision on logbooks. As far as the schemes for the progressive reduction of discards are concerned, a relevant provision should be kept. Such a provision, which should also be part of the provision on logbooks, anticipates a likely instrument for the reduction of discards without predetermining it and will only apply in accordance with Community legislation which is not yet in place.

#### Articles 43 to 46: Real-time closures;

The Commission will ensure a harmonised approach to real-time closures in this proposal through discussions on a technical measures regulation and consultations with Norway. With this in mind, the Commission will fully redraft the original text to reflect this.

#### Article 47: Recreational fishery;

The Commission considers it essential to get a better knowledge of the impact of recreational fisheries on stocks subject to recovery plans in Community waters. It is also essential to ensure that recreational fisheries are conducted in a manner compatible with the objectives of the CFP. The Commission acknowledges the administrative burden that a general authorisation system for recreational fisheries would entail. On the basis of a sampling plan, the Member States should, however, monitor the catches subject to recovery plans by recreational fisheries and the information gathered should be evaluated by the Scientific, Technical and Economic Committee for Fisheries (STECF). In case this evaluation demonstrates the relevant recreational fishery to have a significant impact on the resource concerned, there must be the option to introduce specific management measures like fishing authorisations and catch declarations. These catches must also be counted against the relevant quota of the Member State concerned in order to keep the overall catches of the stock within sustainable limits. Article 47 will be redrafted along these lines.

#### Article 52: First sale in auction centres;

It is important to ensure the registration of data at the point of first sale. Taking note of the request that direct sales and their registration should be possible outside auction

centres, this article will be redrafted to allow the registration of fishery products by registered buyers or producer organisations as well.

#### Article 53: Weighing of fishery and aquaculture products;

The Commission recognises that weighing is a sensitive issue for the sector. It is of extreme importance to get the exact catch figures as in the future, the whole control system will be based on an automated and comprehensive evaluation of data in which data from different sources will be systematically cross-checked on their coherence. This being said, the original text of article 53 will be adapted in order to take into account the specific situation of the pelagic fisheries and other fisheries respectively. In this context, it must be emphasised that only the weighing is obligatory. Once weighed, nothing prevents the catch from being transported and processed in a place far away from the point of landing, subject to the applicable rules on transport and first sale.

#### Article 63: Observers;

The purpose of the Article 63 is to define the role and functions of an observer in case an observer scheme applies. Within such a scheme, the role of the observer is naturally to observe the respect of CFP rules by the vessel. As this specific context has not been clear enough in the original version, the next compromise proposal will clarify that Article 63 is only applicable in the framework of observer scheme and does not therefore apply to purely scientific observers. It will also be clarified that in case of an infringement, the observer will not have the authority to take any measure against the vessel but instead will have to inform the competent flag State authorities which will have to decide on the further actions to take.

#### Article 80: Corrective measures in the absence of prosecution by the Member State on landing or transshipment;

The proposed provision is only taking up article 32 of Regulation (EEC) No 2847/93 which will be replaced by Article 80 of the new regulation. The Commission does not anticipate any change in the application of this article which has not led to any complaints from the industry thus far.

#### Article 82: Sanctions for serious infringements;

The proposed Article 82 is complementary to the Regulation (EC) No 1005/2008 establishing a system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU). Rules on sanctions in the proposed regulation can therefore not fall behind on that regulation. Paragraph 4 of this article is literally taking up the relevant wording of Article 44 paragraph 2, (third subparagraph) of that regulation. The prejudice to the fishing resources and the marine environment is only one of many possible criteria to be taken into account and reflect the fact that fisheries activities do not take place in isolation.

#### Article 84: Penalty point system;

The Commission agrees that a common system at Community level would be appropriate and the text of the article already foresees this. In view of the discussions on this article, the scope will be limited to serious infringements.

Article 87: Specific Community control action programmes;

This article takes up Article 34c of the Regulation (EEC) No 2847/93. Coordination with Member States is foreseen because they will have to provide the means for the implementation of these programmes and as a result, it will be necessary to determine the fisheries subject to a specific control and imposition programme in union with the Member States concerned. This provision does not prevent RACs from getting involved in the preparation of these programmes. Article 95: Suspension and cancellation of Community financial assistance;

The article is necessary to ensure the full respect of the CFP rules by all Member States. The provision is essentially instructive in nature and acts as a tool to make Member States respect applicable law. It is politically untenable that a Member State openly ignores the respect of the CFP rules and continues to receive Community financial assistance at the same time. This would undermine the reputation of the CFP in the eyes of both the industry and the general public.

The proposed procedure is proportionate both to its conditions of application and its consequences and allows the Member State concerned to correct its behaviour at any moment of the procedure. The cancellation of the Community financial assistance would only be recourse as a last resort. Available legal action, i.e. proceedings for breach of Community law in the European Court of Justice, has proven to be too lengthy to be an effective tool to bring about the immediate punishment of the inappropriate behaviour of a Member State. In one notorious case, it took more than 20 years to bring about a condemnation of the Member State involved. In a political area where the success of the policy depends on swift action, the Commission must have at its disposal, the means to ensure compliance with CFP rules and to punish the wrongdoers. In any event, the application of such a measure does not affect the possible legal avenue available to the Member State concerned to challenge such a measure before the appropriate European instances like the European Court of Justice.

Article 97: Deduction of quotas;

This article elaborates the already existing Community law (see Article 5 of Regulation (EC) No 847/96). The concept is therefore not new and its application has not given rise to any complaints by the industry nor by Member States. The way of how the consequences of its application are dealt with at national level is a matter of national competence.

Articles 98, 99 and 100;

All three articles are supposed to ensure a proper implementation of CFP rules, in particular on quota management. Their application, like every application of Community law by the Commission, is subject to the principle of proportionality. With a view to defining their scope more clearly and to emphasising the importance attached by the Commission to the successful implementation of multi-annual plans, the application of these three articles will be limited to the stocks subject to multi-annual plans.

I hope that these explanations have helped made clear that the Commission has taken on board many concerns of the sector. Many of these amendments cater for the specific conditions in which fishing vessels operate at sea. At the same time, the use of modern technologies will also bring about an efficient simplification for the sector and will

ensure full respect of the rules by fishermen, which is a necessary precondition for management measures to come to fruition and benefit the fishing industry as a whole. As I already mentioned, the Commission plans to make available up to 95% of Community financial assistance for investments related to the acquisition of new technologies foreseen in this regulation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Fokion Fotiadis', written in a cursive style.

Fokion Fotiadis