

## Draft

# Discussion NOTE ON THE PROPOSED CONTROL REGULATION

## INTRODUCTION

The Proposal for a new Control Regulation represents in substantial part a response to the 2007 Special Report of the Court of Auditors which was highly critical of the control, inspection and sanction systems in force. Looking backwards, it highlighted the poor quality and the inconsistencies of the data<sup>1</sup> upon which efficient management of the system depended and, in particular, the role that under-reporting played. It refers to a period when infringements often went undetected and, even when detected, frequently went unpunished.

The Court of Auditors made a number of recommendations including the need to improve catch data, the rapid expansion of electronic monitoring, introduce of effective sanctions and the reinforce of the Commission's powers to deal with defaulting Member States. In very large part the new proposal is intended to meet these objections and recommendations.

## ASSUMPTIONS

Underlying the proposed new Control Regulation are a number of assumptions.

The first assumption is that the measures currently in force are sufficient to produce the desired result if only they are fully implemented. This proposition is open to question as there is a body of evidence that suggest that some measures, such as effort control, have largely negative results.

The second is that all fisheries are alike and can therefore be managed in the same way. This is a disappointing development since it undermines the significant progress that has been made towards regionalisation in recent years - as manifested by the establishment of Regional Advisory Councils. Assuming that the same measures are equally applicable, for example, in the Mediterranean and the North Sea is to underestimate the importance of biological, social, economic, cultural and political factors.

The third major assumption relates to the Impact Assessment which is based upon six case studies, pages 114 – 119, (North Sea Cod, Baltic Cod, North Sea Plaice and Sole, Northern Hake, Southern Hake, Western Mackerel<sup>2</sup> and Mediterranean Hake<sup>3</sup>). The

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<sup>1</sup> Note that the data used would relate to 2006 at the latest and would hardly have had time to demonstrate the effect of the Registration of Buyers and Sellers Act of 2005.

<sup>2</sup> There is uncertainty about the data for this species.

<sup>3</sup> For which it was found that there was insufficient data to undertake a case-study.

case-studies are superficial and, on occasion, erroneous<sup>4</sup>. The results of the case-studies are then “globalised” by applying the results of the case-studies to the species that are held to be most similar. Although there is some data on the whitefish sector, there is no information on the Mediterranean and the Pelagic data is uncertain. The universal applicability of the whitefish pattern of costs and benefits must be open to question.

A fourth assumption is that the objectives of an effective control policy with a high degree of compliance can be achieved without improvements in the governance of the CFP. In this sense the Proposal is a continuation of the command and control approach to fisheries that a number of observers have identified as one of the core weaknesses of the CFP.

## **KEY ISSUES**

### ***Article 9 Vessel Monitoring Systems***

*This Article reiterates the existing requirements for vessels over 15 metres to have a VMS system; vessels from 10 – 15 metres will be required to operate such a system from 1 January 2012.*

In spite of the fact that there are exemptions for those vessels that never spend 24 hours or more away from port, there are a number of problems with this article in so far as it affects the inshore fleet. The practicality of installing all the extra electronics is not obvious in small vessels where the wheelhouse is already very full and will require substantial re-wiring. In addition there are supply and maintenance problems in some countries where there is only one, or a limited number of, equipment suppliers<sup>5</sup>.

### ***Article 10 Automatic Identification Systems***

*In addition to VMS, vessels over 15 metres will be required to carry an AIS so that the member States can cross-check VMS data.*

Here the issues relate to the duplication of systems and the additional expense involved. The question also arises as to whether or not having a back-up system would enable vessels to go to sea if the VMS was out of commission.

### ***Article 14 Logbook***

*1. Fishing vessels are to record all quantities of over 15kg of species kept on board (previously 50kg.). The quantities of fish discarded at sea are also to be recorded.*

Whilst applying 15kg has the advantage of uniformity with the Mediterranean, the fisheries are not the same and applying 15kg in a multi-species demersal fishery creates an unnecessary burden that is disproportionate to any benefits

*3. The margin of tolerance is set at 5% for estimates recorded in the logbook.*

As the fact that the 8% margin of tolerance associated with recovery stocks has given rise to major problems of compliance 5% is wholly impractical given the conditions normally prevailing in the North Sea<sup>6, 7</sup>. It appears that this figure has been used for

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<sup>7</sup> E.g. There is, for example, considerable weight loss with some fish (e.g. monk) when they have been held at sea for 10 days

presentational and negotiating reasons but it is a pity that it has not been possible to have a mature dialogue about striking the right balance between compliance and practicality

**Article 17 Prior Notification**

*The provision as it stands reads that Every vessel has to give 4 hours notice before landing*

This provision is unworkable. Many inshore vessels are not out for four hours. Furthermore, there is the safety aspect in bad weather.

**Article 18 Transshipment**

*Transshipment at sea is prohibited.*

Such a requirement may be difficult to apply for the Deep Sea fleet. In addition, there should be an exemption if the article is found to apply to pair trawling.

**Article 21 Landing Declarations**

*Landing declarations must be made within two hours of landing.*

*It is recognised that the under 10 metre fleet may not land in a port where it can file a declaration and the time that may elapse before the declaration is made is fixed at 24 hours.*

The 2 hour restriction is unworkable. In addition, (and throughout) no distinction is made between fresh and frozen fish and the different ways in which they are commercialised.

**Article 34 Designated Ports**

*Criteria are set for a port to be considered as a designated port. These include restricted landing times, restricted landing places, full inspection coverage during landing times at all landing places. In addition the average annual weight of the relevant species must represent at least 5% of the total port landings.*

These restrictions have the effect of reducing the number of places where species subject to Multiannual Plans may be landed and thus increase the vessel owners' costs. These restrictions have negative implications for safety in the event of bad weather or emergencies. It is also unclear how this provision will apply to tidal ports.

**Article 35 Separate stowage of recovery species**

*Separate stowage is to be provided for recovery species.*

Such a provision again means added costs for the industry and in addition reduces the carrying capacity of the vessel thus raising the breakeven point. Furthermore, separate storage can lead to safety problems with unstable storage. In addition, on smaller vessels there is neither the space, nor the facilities, to weigh, box and label fish. Shellfish, in fact, are usually bulked and kept best that way.

**Article 40 Transit through a Marine Protected Area**

*1.(b) Speed is set at not less than 6 knots.*

*2. A transit report is to be made before entering a Marine Protected Area.*

The 6 knots provision implies that all MPAs are No Take Zones, NTZs, and this should not be the case. There is also the possibility that, a) some vessels will not be capable of doing 6 knots (e.g 10 metres), and also that b) some vessels may not be able to do 6 knots in heavy seas for safety reasons.

### **Article 41 Registration of Discards**

*1. All discards over 15kg live weight are to be recorded and declared to the relevant authorities as soon as possible.*

The 15kg live weight limit seems to be the new Commission threshold set to bring other areas into line with the Mediterranean. It is inappropriate for the multi-species demersal fisheries of the North Sea. It is also unclear whether this applies to a haul, a trip or a period, e.g. a month or a year.

### **Article 52 First Sale in Auction centres**

- 1. Requires that the first marketing of species subject to quota or effort controls should only be sold and/or registered at an auction centre to registered buyers.*
- 2. Other fisheries products shall only be sold at an auction centre or to bodies or persons authorised by Member States.*

This article is drawn up to cover the continental model and does not provide for contracts outside of auction centres. In addition, in some markets there are no buyers for certain species.

### **Article 53 Weighing of fishery and aquaculture products**

- 1. Fish shall be weighed prior to the fish being sorted, processed, held in storage and transported from the place of landing resold.*
- 3. By way of derogation, fresh fish may be weighed within 20 kilometres of landing.*

20km is totally unacceptable. In addition, there is an assumption that all fish is landed weighed, boxed and labelled which is not true in all member states

### **Article 76 Enhanced follow-up with regard to certain serious infringements**

- 1. Vessels will be required to proceed to port for a full inspection if it is suspected of -*
  - a) misrecorded catches of more than 500 kilograms or 10% calculated as a percentage of the logbook figures, whichever is the greater or to have*

The limits of 500kilograms or 10% are not workable in the multi-species, demersal, fisheries of the North Sea.

### **Article 84 Penalty Point System**

*The Regulation proposes a Penalty Point System*

*3. Provides for the fishing authorisation to be suspended for six months once a certain level of points has been reached. If this level is reached a second time the authorisation is suspended for a year. When the level is reached a third time the licence is withdrawn permanently.*

- 1. In the event of serious infringement the points deducted shall be at least half the level mentioned in 3.*
- 2. If there are no new infringements at the end of three years all the points are deleted.*

*7. The penalty points system shall apply to masters and officers of vessels.*

It is crucial that all Member States agree a common system. In addition, the legality of expropriating an asset and the right to compensation may cause problems.

## **CONCLUSION**

The proposed Control Regulation appears to have been introduced without any attempt to address the degree of variation in the working conditions of the European fisheries. Much of the emphasis is inappropriate for the multi-species, demersal fisheries of the North Sea.

Any simplification that the Proposal implies is aimed at reducing the burden of fisheries administrations rather than for the operators of fishing vessels

In addition, the proposed Regulation would involve the industry in considerable expense (for the benefit of the administrators) at a time when profitability has been squeezed.

There appears to be a lack of appreciation of the variety of ways in which the fisheries are commercialised and reach the ultimate consumer.

Most worryingly, there appears to be an absence of concern for the safety of fishing vessels given the circumstances in which they operate.

Overall, the Proposal is a disappointing and backward looking reaction to the criticisms of the Court of Auditors which misses the opportunity to build compliance on the basis of a coherent and accepted body of rules.