

September 2017

Slipping through the net - The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

Contents

Executive summary.....	3
Introduction	3
Findings	5
Significant delays in the introduction of several requirements of the Control Regulation	5
A lack of harmonisation jeopardises the creation of a level-playing field	6
The number of sanctions is low and their level cannot be considered deterrent	7
The enforcement system lacks transparency	11
Conclusion	12

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

September 2017



Executive summary

The Control Regulation should, together with the Common Fisheries Policy (CFP), play a crucial role in ensuring that European Union (EU) waters are not overfished and contribute to a healthy marine environment. ClientEarth carried out case studies in France, Ireland, the Netherlands, Poland, Spain and the UK (England) to assess whether the fisheries enforcement framework outlined by the EU Control Regulation and the Illegal, Unreported and Unregulated (IUU) Regulation is being implemented in these Member States or regions.

The findings show a number of disturbing trends; Member States are not meeting their requirements in relation to enforcement, nor is there a level playing field for fishers across the EU.

Our key findings are that:

- Significant delays arose in the adoption of national measures related to the Control Regulation and some still have not been implemented.
- The number of sanctions imposed for infringements to the rules of the CFP is low and the level of these sanctions does not meet the criteria of the IUU and Control Regulations.
- There are differences both within and between Member States in terms of general approach, types of follow-up actions, and both levels and types of sanctions, and these differences do not contribute to a 'culture of compliance' or efficiency of the system.

Member States need to tackle the problem of poor enforcement of the rules and ensure that the requirements of the Control and IUU Regulations are implemented effectively. Imposing sanctions at effective, dissuasive and proportionate levels, and ensuring that these sanctions take into account the damage done to the marine environment, are the next crucial steps to ensure that the objectives of the EU's CFP are ultimately met.

Introduction

In 2007, the European Court of Auditors (ECA) issued a special report on the EU fisheries control system in which it noted that, in the Member States it audited to prepare its report, *"the procedures for dealing with reported infringements do not support the assertion that every infringement is followed up and still less infringements attract penalties; even when penalties are imposed their deterrent effect is, on the whole, limited"*.¹ The European Commission supported these findings by underlining, in 2008, that *"sanctions for infringements of [Common Fisheries Policy] CFP rules are not sufficiently deterrent and therefore the system in place is one more factor which encourages non-compliance with the CFP rules and overfishing"*.²

¹ European Court of Auditors Special Report No 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources together with the Commission's replies, §2.

² Commission Staff Working Document SEC (2008) 2760 of 14 November 2008 accompanying the proposal for a Council Regulation establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy - Impact Assessment, p. 9.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

September 2017



A radical change was therefore needed in the control and enforcement strategy of EU Member States and, to help achieve that, a new EU "Control Regulation"³ was adopted in 2009. It entered into force on 1 January 2010, the same day as another EU regulation whose aim is to prevent, deter and eliminate Illegal, Unreported and Unregulated (IUU) fishing, the "IUU Regulation". Together, these regulations form the control pillars of the CFP.

The Control Regulation contains a section on enforcement which places a number of obligations on Member States:

- Ensuring that appropriate measures, including administrative action or criminal proceedings, are systematically taken for every breach of the CFP.⁴
- Imposing sanctions which are effectively dissuasive for cases of serious infringements.⁵ The IUU and Control Regulations have established a list of infringements which can be considered as serious by the competent authorities of the Member States if they meet certain criteria defined at the national level.⁶
- Establishing a penalty point system for licence holders and masters of fishing vessels who commit a serious infringement of the rules of the CFP.⁷
- Establishing a national register of infringements, where all infringements of the rules of the CFP committed by vessels flying the flag of the Member State or by their nationals will be registered.⁸

In 2015, the European Commission decided not to revise the IUU Regulation, but instead to focus on its implementation.⁹

Six years after its entry into force, the Control Regulation was evaluated by the European Commission which noted in a report that "*enforcement, especially concerning sanctions and point system, follow up of infringements (...) are the areas that show the biggest shortcomings*".¹⁰ After the publication of this evaluation, the decision was taken to revise the Control Regulation.

In order to inform the debate on this revision process and on the implementation of the IUU Regulation, ClientEarth conducted a series of case studies in six EU Member States or regions of a Member State: France,¹¹ Ireland,¹² the Netherlands,¹³ Poland,¹⁴ Spain,¹⁵ and the UK (England).¹⁶ We looked at the legal framework in place in each Member State or region to deal with fisheries

³ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

⁴ Article 89 of the Control Regulation.

⁵ Article 90 of the Control Regulation.

⁶ Article 3 (2) of the IUU Regulation; Article 90 of the Control Regulation. The criteria can include the nature of the damage done, its value, the economic situation of the offender and the extent of the infringement or its repetition.

⁷ Article 92 of the Control Regulation.

⁸ Article 93 of the Control Regulation.

⁹ Communication from the European Parliament and the Council of 1 October 2015 on the application of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

¹⁰ Commission Staff Working Document SWD (2017) 134 final, REFIT - Evaluation of the impact of the fisheries regulation.

¹¹ <https://www.documents.clientearth.org/library/download-info/the-control-and-enforcement-of-fisheries-in-france/>

¹² <https://www.documents.clientearth.org/library/download-info/the-control-and-enforcement-of-fisheries-in-the-republic-of-ireland/>.

¹³ <https://www.documents.clientearth.org/library/download-info/the-control-and-enforcement-of-fisheries-in-the-netherlands/>.

¹⁴ <https://www.documents.clientearth.org/library/download-info/the-control-and-enforcement-of-fisheries-in-poland/>.

¹⁵ <https://www.documents.clientearth.org/wp-content/uploads/library/2017-09-29-the-control-and-enforcement-of-fisheries-in-spain-ce-en.pdf> ClientEarth commissioned the Instituto Internacional de Derecho y Medio Ambiente to carry out this study.

¹⁶ <https://www.documents.clientearth.org/library/download-info/the-control-and-enforcement-of-fisheries-in-england/>.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

September 2017



infringements and sanctions. ClientEarth also carried out some additional research on how these frameworks are being implemented by the national or regional competent authorities. Each case study contains some recommendations which are country or region specific. However, while undertaking this exercise, we also noted that some of our findings were present across multiple case studies, suggesting that they are relevant to raise at EU level. The section below details ClientEarth's key findings.

Findings

Significant delays in the introduction of several requirements of the Control Regulation

In general, Member States have been slow in adopting the laws needed to give full effect to the Control Regulation. This is particularly true in relation to the penalty point system: the Control Regulation Implementing Regulation¹⁷ states that its provisions regarding the penalty point system for fishing licence holders and masters should have entered into force on 1 January 2012.¹⁸ As of October 2016, the situation in the Member States and regions we analysed is as follows:

- In England, guidance for the application of the point system to licence holders was only issued in May 2013.¹⁹ For masters of fishing vessels, the system was introduced even later, through a Statutory Instrument of 18 December 2014.²⁰
- In France, it was only introduced through a Decree adopted on 26 December 2014,²¹ and information on the actual application of the penalty points system is not publically available. In May 2017, the European Court of Auditors indicated that the system is not implemented at the moment.²²
- In Ireland, the penalty point system for licence holders was introduced in 2014, but is currently on hold due to two decisions of the Irish High Court to strike down the instrument that introduced the system into the Irish legal order. There is no penalty point system for masters of fishing vessels.²³
- In the Netherlands, the penalty point system for both licence holders and masters of fishing vessels entered into force on 1 January 2012,²⁴ thus making the Netherlands the only case here of timely implementation of this requirement.
- In Poland, the point system was introduced through an Act adopted in 2014 and entered into force in 2015.²⁵

¹⁷ Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

¹⁸ Article 134 of the Control Regulation Implementing Regulation.

¹⁹ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314545/points.pdf.

²⁰ See: <http://www.legislation.gov.uk/uksi/2014/3345/contents/made>.

²¹ See:

https://www.legifrance.gouv.fr/affichTexte.do?sessionId=D4133A491E014FB54EA2387C0A886F9A.tpdila07v_2?cidTexte=JORFTEXT000029972968&dateTexte=20141227.

²² European Court of Auditors Special Report No 8/2017, EU fisheries controls: more efforts needed, p.49.

²³ <https://www.documents.clientearth.org/library/download-info/the-control-and-enforcement-of-fisheries-in-the-republic-of-ireland/>.

²⁴ Article 130 of the 2011 Dutch Implementing Regulation on Sea Fisheries.

²⁵ See: Ustawa z dnia 19 grudnia 2014 r. o rybołówstwie morskim, available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20150000222>.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)



September 2017

- In Spain, the Royal Decree describing the implementing rules for the penalty point system for both licence holders and masters of fishing vessels was only adopted on 15 February 2013.²⁶

In addition, in Ireland, there is still no formal national register of infringements, as required by the Control Regulation.

A lack of harmonisation jeopardises the creation of a level playing field

In 2008, the European Commission noted that in a new Control Regulation, "*harmonised sanctions would help to achieve a level playing field in fisheries by aiming at establishing penalties that are (...) comparable in all Member States*".²⁷ To that end, the Control and IUU Regulations define some infringements as serious ones and this categorisation has legal implications for how these infringements should be handled. The regulations indeed require that serious infringements are punished by effective, proportionate and dissuasive administrative and/or criminal sanctions. The IUU Regulation establishes minimum thresholds for the administrative sanctions - "*at least five times the value of the fishery products obtained by committing the serious infringement*".²⁸ Both regulations also state that the value of the prejudice (i.e. damage or degradation) to the fishing resources and the marine environment concerned shall be taken into account in applying the administrative sanctions. The Control Regulation adds the obligation to impose penalty points to the licence holder and to the master of the fishing vessel who commit serious infringements.²⁹

The problem we identified is that the characterisation of an infringement as "serious" is left to the discretion of the competent authorities of EU Member States. The Control and IUU Regulations merely state that, in defining an infringement as serious, the Member States shall take into account the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition. This list of criteria is not exhaustive, and Member States are free to take additional factors into consideration.

- In England, an infringement will only be considered serious if successful criminal proceedings take place against the natural or legal person responsible for that serious infringement.
- In France, eleven different criteria can be alternatively or cumulatively used to determine if an infringement is serious or not. It could be for example that the infringement took place during a closed season or in a closed area, that there is a recording error of more than 20% in the fishing logbook or that the same ("non-serious") infringement was repeated three times within three consecutive months.
- In Ireland, although the concept of "serious infringement" exists under the current law, there is no published guidance from the competent authorities on how to determine if an infringement is a serious one or not.

²⁶ Spanish Royal Decree 114/2013 of 15 December 2013 on the creation and regulation of the national register of serious infringements to the Common Fisheries Policy, the establishment of implementing rules for the penalty point system and updating the amount of sanctions foreseen in Law 3/2001 of 26 March 2001 (BOE n° 51 of 28 February 2013).

²⁷ Commission Staff Working Document SEC (2008) 2760 of 14 November 2008 accompanying the Proposal for a Council Regulation establishing a Community Control System for ensuring compliance with the rules of the Common Fisheries Policy, p.39.

²⁸ Article 44 of the IUU Regulation.

²⁹ Article 92 of the Control Regulation.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)



September 2017

- In the Netherlands, the competent administrative authority determines what constitutes a serious infringement based on the circumstances of each case, including: (i) the nature of the infringement; (ii) the consequential damage; (iii) the value of the damage to the concerned fish stocks and to the marine environment; and (iv) the extent of the infringement.
- In Poland, there are four generic criteria to determine the gravity of an infringement: its repetition, the value of the benefits gained, the total length or power of the main engine of the fishing vessel, and the geographic scope of the infringement. These criteria are then further defined depending on the infringement itself. For example, fishing without a licence, permit or authorisation will only be considered a serious infringement for vessels above 10 meters.
- In Spain, the law defines what serious or very serious infringements are. Penalty points can be attributed by the competent authorities in these cases, taking into consideration the gravity of the infringement, using the criteria defined in EU law.

It means concretely that there is not a level playing field across the EU: some fishers could potentially receive penalty points and effective, proportionate and dissuasive sanctions for infringements which would not be considered as serious infringements by other flag States. This issue was acknowledged by the European Commission in its evaluation report on the implementation of the Control Regulation, in which it stated that *"the effective implementation of the sanctioning system, including point system for serious infringements are recognised pillars to ensure equal treatment of fishermen. However, while the Control Regulation provides for what is considered to be an adequate legal framework in line with the Treaty, national systems and their application vary considerably across Member States. The current point system for serious infringements is not applied by Member States with even criteria"*.³⁰

On top of the differences in the legal definitions of 'serious infringement', anecdotes show that attitudes vary enormously between Member States. For example, the Irish authorities found a Danish vessel guilty of fishing without quota in Irish waters and proposed to Denmark that it should assign penalty points as a consequence of what constituted a serious infringement according to Irish law. Denmark refused to do so, arguing that a quota swap was made several days after the vessel was caught fishing illegally.³¹ This incident further undermined the credibility of the EU control system amongst Irish fishers, and this in the end generated more discontent and disengagement with the system.

The number of sanctions is low and their level cannot be considered deterrent

The percentage of infringements detected during controls at sea, on landing or throughout the supply chain varies greatly from one Member State to another. In France for example, data from 2015 indicates an infringement rate of 18% for controls at sea and of 8.4% for controls on

³⁰ COM(2017) 192 final, Report from the Commission to the European Parliament and the Council, Implementation and evaluation of Regulation (EC) 1224/2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy as required under Article 118, p. 7.

³¹ See: <http://www.inshore-ireland.com/News/danish-dismissal-of-fishing-violation-throws-penalty-system-into-disarray.html>.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

September 2017



landing.³² That same year, within the UK, England reports an infringement rate of 17.4% for controls at sea.³³ In Spain, whereas the infringement rate was at 10% in 2016 at the national level, it increased to 18% in Andalusía and even to 26% in Galicia.³⁴ These numbers are high compared to the ones provided by Ireland and Poland. In 2014, Ireland conducted 2,308 inspections and reported 75 infringements, a rate of 3.2%.³⁵ In 2015, under the framework of the Joint Deployment Plan for the Baltic Sea, Poland reported an infringement rate of 2.2% for controls on landing and of 2.6% for controls at sea.³⁶ There is no clear explanation for this discrepancy. Some stakeholders interviewed during the preparation of these case studies have suggested that this could be linked to the need for competent authorities to meet certain control objectives, which could ultimately lead them to include in their reports inspections which are not effective enough to detect infringements.

Once an infringement is detected, Member States have an obligation under the Control Regulation to take appropriate measures, such as administrative sanctions or criminal proceedings, against the offender. In England, France, the Netherlands and Spain, both administrative and criminal sanctions can be imposed, although in practice, one system will tend to be more used than the other. For example, in France, administrative proceedings are more frequently used than criminal ones, whereas in the Netherlands, the criminal system tends to be predominant. In Ireland, besides a simple verbal warning, only criminal proceedings can take place. In Poland, the system relies solely on administrative sanctions. Under all these systems, the data collected throughout our case studies show that the requirement of the Control Regulation is far from being met. For example:

- In England, in 2015, the Marine Management Organisation carried out 1,597 compliance checks at sea and in ports, which resulted in 53 court prosecutions, 17 written warnings, 77 verbal warnings and 14 Financial Administrative Penalties (FAPs).
- In France, consolidated and publicly available data is lacking on the follow-up actions undertaken by competent authorities following the detection of an infringement. Evidence gathered during the study suggests that not all infringements detected are followed by the establishment of a so-called "procès-verbal", although they should be.
- In Ireland, in 2014, 2 warning letters were issued, 13 vessels were detained, 11 files were forwarded to the Director of Public Prosecution charging officer, and 4 incidents were still under investigation at the time of publication of the 2014 annual report of the Sea-Fisheries Protection Authority.
- In the Netherlands, between 2010 and 2014, 5,483 inspections were carried out and the number of infringements reported by the authorities was 752.
- In Poland, in 2014, 185 financial sanctions were imposed following the detection of infringements.
- In Spain, in 2016, 10,238 inspections were conducted by the national competent authorities, which resulted in the reporting of 1,058 infringements.

³² See: http://www.developpement-durable.gouv.fr/IMG/pdf/Bilan_2015_du_CROSS_Etel.pdf.

³³ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446310/MMO2015annualreport.pdf.

³⁴ See: <https://www.documents.clientearth.org/wp-content/uploads/library/2017-09-29-the-control-and-enforcement-of-fisheries-in-spain-ce-en.pdf>

³⁵ See: <http://www.sfpa.ie/Portals/0/Corporate%20Affairs/Annual%20Reports/2014/SFPA%20Annual%20Report%202014%20English.pdf>.

³⁶ See: <http://www.efca.europa.eu/en/content/annual-report-2015>.

As stated in the Control Regulation, sanctions for all types of infringements must be applied *"in such way as to make sure that they effectively deprive those responsible of the economic benefit derived from their infringement without prejudice to the legitimate right to exercise their profession"*.³⁷ In addition, in the case of serious infringements, administrative sanctions should be of a maximum of at least five times the value of the fishery products obtained by committing the serious infringement and, for both penal and administrative sanctions, must be effective, proportionate and dissuasive.³⁸ The value of the prejudice to the fishing resources and the marine environment concerned must also be taken into account.³⁹

According to ClientEarth's research, these requirements are not implemented by any of the Member States we analysed. In these six countries or regions, there are no guidance or guidelines available to administrative competent authorities or judges on how to take into account the value of the prejudice to the fishing resources and the marine environment when deciding on the amount of a fine or sanction. Several stakeholders interviewed to prepare these case studies openly recognised that this obligation is not, at the moment, taken into account by competent authorities when establishing sanctions.

As for the level of the sanctions themselves, it is always difficult to provide firm conclusions on that issue. The datasets used to prepare the case studies were not all complete, and sometimes had a larger scope than merely the sanctions for infringements of the CFP rules. Besides the issue of a lack of consolidated and publicly available data on the implementation of the enforcement requirements of the Control Regulation, it should also be noted that a simple analysis of the total amount of fines imposed and of the average of these fines may not be sufficient to completely assess the level of compliance of the Member States with their obligation to effectively sanction infringements to the rules of the CFP. It nevertheless gives a snapshot of the current situation.

- In England, in 2013, for the cases brought to court by the Marine Management Organisation, the average fine was £1,313, with £242 awarded in court costs (approximately 1,488 Euros and 262 Euros in court costs). In 2015, the largest fine was £1,333 or 1,445 Euros. In 2016, as of October 2016, 2 guilty verdicts had been handed down, imposing fines of £500 or 542 Euros each.
- In France, the only dataset available is from the Ministry of Justice and it only concerns criminal sanctions. For 2014, it indicates that when criminal proceedings are launched, only 10.4% of the cases are in the end tried in front of a court. The vast majority of cases are therefore dealt with through means of out-of-court settlements, and there is no data on the level of sanctions imposed in this context. In court cases, the average level of fines was 1,675 Euros.
- In Ireland, in 2014, 10 fines were imposed by judges, with an average of 1,450 Euros.
- In the Netherlands, the legislation includes the possibility to apply high maximum fines, but interviews conducted to prepare our case study suggest that this maximum is almost never applied by judges and that sanctions are much lower in practice.
- In Poland, in 2015 in the District Inspectorate of Gdynia, 27 fines were imposed for a total of 40,400 zlotys (or approximately 9,328 Euros, for an average of 345 Euros). For serious infringements, the average was even lower, at a level of 288 Euros!

³⁷ Article 89 (2) of the Control Regulation.

³⁸ Article 90 of the Control Regulation; Article 44 of the IUU Regulation.

³⁹ Article 90 (4) of the Control Regulation; Article 44 (2) of the IUU Regulation.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)



September 2017

- In Spain, no complete dataset on the level of sanctions was available. Examples were provided of high levels of sanctions imposed by administrative competent authorities in very serious IUU fishing cases, following the Sparrow 1 and 2 operations.⁴⁰

Apart from fines, other sanctions can be applied in cases of infringements of the rules of the CFP. They can be immediate enforcement measures such as the re-routing and immobilisation of fishing vessels,⁴¹ or accompanying sanctions, such as the withdrawal of authorisation to fish or of fishing rights, or a ban on access to public subsidies.⁴² The suspension or withdrawal of a fishing licence can be one of these measures and, indeed, a legal basis exists in most EU Member States' national law to adopt such a sanction. But before 2010, this sanction was only very rarely imposed when an infringement was committed, and this led to the introduction, through the Control Regulation, of a penalty point system for licence holders and masters of fishing vessels which would trigger the withdrawal of the fishing licence and the suspension of the master from his capacity to act as such, once a number of points had been attributed. Although this system should have been fully implemented at the latest by 1 January 2012, there is still very little evidence that it is actually working and that penalty points are effectively attributed. For instance:

- In England, there is no publicly available evidence that any penalty points have been administered. In any case, giving penalty points will be difficult, as the English system requires that a successful prosecution took place before the authorities can be authorised to do so - and in the meantime, Article 92 (4) of the Control Regulation provides that *"if the holder of the fishing licence does not commit, within three years from the date of the last serious infringement, another serious infringement, all points on the fishing licence shall be deleted"*. Concretely, as judicial cases very often last more than two years, it means that the administration of penalty points will be likely to happen just before or after this three-years deadline and will therefore be inefficient.
- In France, the competent control authorities orally informed us that penalty points have been administered, but there is no publicly available record of these. The European Court of Auditors contradicts this assertion in its 2017 report on EU fisheries controls.
- In Ireland, in 2014, according to the annual report of the Sea-Fisheries Protection Authority, penalty points were attributed to three different licence holders. There is no publicly available data for 2015, and the penalty point system has been on hold since early 2016, when two judgments of the Irish High Court challenged the instrument that brought this into Irish law. In addition, there is no penalty point system for masters of fishing vessels.
- In the Netherlands, 16 penalty points were administered during the period 2010-2014.
- In Poland, as of October 2016, no penalty points had been administered.
- In Spain, the total number of penalty points administered to licence holders between 2013 and 2015 was 69.

In addition, Member States or regions which are effectively implementing the penalty point system are not always making a direct link between the classification of an infringement as a serious one

⁴⁰ The Sparrow 1 and 2 operations were enforcement actions conducted by the Spanish authorities against fishing operators suspected of being involved in the illegal fishing of Patagonian toothfish in the Southern Ocean. For more information, see for example: <http://iuufishing.ideasoneuropa.eu/2016/03/22/operation-sparrow-eus-fight-iuu-fishing/>.

⁴¹ Articles 43 of the IUU Regulation and 91 of the Control Regulation.

⁴² Article 45 of the IUU Regulation.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

September 2017



and the attribution of points to the licence holder and to the master. This problem was noted by the European Commission in its evaluation report on the implementation of the Control Regulation: *"according to the data received, less than in half of cases points were allocated to the licence holder when a serious infringement was detected"*. This is an incorrect implementation of Article 92 of the Regulation, which establishes a direct and unquestionable link between the determination of an infringement as being a serious one and the attribution of penalty points.⁴³

The enforcement system lacks transparency

A 1999 EU Regulation established a list of serious infringements of CFP rules and made it an obligation for Member States to regularly report to the Commission on the infringements detected and on the follow-up actions undertaken.⁴⁴ As a result, every year, the Commission issued a public communication to the Council and the European Parliament which summarises the reports of the Member States on the *"behaviours which seriously infringed the rules of the common fisheries policy"*.⁴⁵

This changed with the adoption of the Control Regulation in 2009. According to this text, Member States now only have to report every five years to the Commission on the implementation of this Regulation, including on the enforcement actions that they take, and these reports are not public. In addition, besides the number of points attributed to fishing licence holders, no detailed information is contained in these reports on the number and level of administrative and criminal sanctions given for infringements to the rules of the CFP.

Access to up-to-date information on these subjects therefore relies on the goodwill of the competent authorities of the Member States and on the possibility, for civil society organisations, to make access-to-documents requests to national competent authorities. During the preparation of our case studies, we encountered very different situations:

- In France, there is very little (and sometimes contradictory) information on the exact number of infringements and level of sanctions. Unsuccessful requests were addressed to the French competent authorities in order to obtain consolidated data on the exact number and level of sanctions.
- In Ireland, information on the number of infringements and the level of sanctions is publicly available in the annual reports of the Sea-Fisheries Protection Authority, but the last available report concerns the year 2015.
- In the Netherlands, most of the information used to prepare the report was gathered in the five years report of that Member State on the implementation of the Control Regulation, obtained following an access to documents request made to the European Commission.⁴⁶
- In Poland, information is not publically available, and we made several freedom of information requests in order to obtain data on the number of infringements and on the level of sanctions. Several authorities replied to our requests.

⁴³ Article 92 (2) of the Control Regulation: *"When a natural person has committed or a legal person is held liable for a serious infringement of the rules of the common fisheries policy, the appropriate number of points shall be assigned to the holder of the fishing licence as a result of the infringement"*.

⁴⁴ Council Regulation (EC) No 1447/1999 of 24 June 1999 establishing a list of types of behaviours which seriously infringe the rules of the common fisheries policy.

⁴⁵ See for example the Communication from the Commission to the Council and the European Parliament - Reports from Member States on behaviours which seriously infringed the rules of the common fisheries policy in 2006, COM/2008/0670 final.

⁴⁶ See: https://www.asktheeu.org/en/request/member_state_reports_under_artic.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

September 2017



- In Spain, some information is made available by national and regional competent authorities, but some was not and could not be obtained through access to documents requests.
- In the UK, some information on infringements and level of sanctions is contained in the annual reports of the competent authorities in charge of control and enforcement. We obtained missing information through freedom of information requests.

Under the CFP Basic Regulation, transparency of data handling was recognised as a principle of good governance.⁴⁷ There is certainly an interest in publishing consolidated and reliable data on fisheries controls and sanctions, as this was the case before the adoption of the Control Regulation in 2010: it will push competent authorities to align the level of sanctions that they are imposing and help to overcome inequalities in the treatment of fisheries infringements at the EU level. Harmonising the level of sanctions between Member States by ensuring that they are all effective, dissuasive and proportionate will also make fishers more likely to be compliant. Publicly available data would also benefit a larger group of stakeholders, such as decision-makers, scientists and NGOs. Ensuring the good quality and the standardisation of the data which will be published would also allow a better overview of the situation at the EU level: very often during the preparation of these case studies, it was impossible to use the data gathered to establish comparisons between the Member States, as datasets were covering different realities and had different scopes.

Conclusion

More than six years after the entry into force of the Control Regulation, Member States are not meeting their requirements in relation to enforcement. Significant delays arose in the adoption of national measures related to the Control Regulation. In addition, some of the requirements of the Control Regulation still have not been implemented. The number of sanctions imposed for infringements to the rules of the CFP is low and the level of these sanctions does not meet the criteria of the IUU and Control Regulations. Furthermore, the transparency of data-handling in relation to the number of inspections, number of infringements detected, and steps that were taken post-detection (including level of sanctions imposed) is not satisfactory.

Confidence in the EU control system is also lacking, as the Control Regulation has, so far, not led to the harmonisation of sanctions it promised several years ago - partly because defining what constitutes a serious infringement falls within the competence of EU Member States. Additionally, there are differences in terms of general approach, types of follow-up actions and both levels and types of sanctions across the EU, and these differences undermine trust in the fairness and efficiency of the system.

The Control Regulation is soon going to be revised but, as identified for the Member States studied, the lack of political will to effectively tackle the problem of poor enforcement of the rules of the CFP raises great concerns. In all the legal frameworks analysed, with the exception of Ireland for the penalty point system, the legal basis to sanction CFP infringements exists. Imposing sanctions at effective, dissuasive and proportionate levels and ensuring that these sanctions take

⁴⁷ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, Article 3 (k).

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

September 2017



into account the damage done to the marine environment are some of the next steps needed to ensure that the objectives of the Control Regulation, and ultimately the CFP, are met.

In addition, the revision process due to start soon will have to take into consideration the need to:

- Maintain a strong and coherent EU legal framework for fisheries controls (and thus avoid any regionalisation of these rules);
- Remove exemptions granted to smaller vessels and better monitor small-scale fisheries;
- Control effectively recreational fisheries;
- Define rules for the control of gross tonnage and of engine power;
- Implement efficient means to control the implementation of the landing obligation;
- Design modern and electronically-based traceability tools;
- Improve accountability and transparency requirements.

Slipping through the net:

The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England)

September 2017



Elisabeth Druel
Lawyer/Juriste
Biodiversity Programme
+ 32 (0) 2808 1328
edruel@clientearth.org
www.clientearth.org

Sandrine Polti
Fisheries Project Lead
Biodiversity Programme
+ 32 (0) 2808 8011
spolti@clientearth.org
www.clientearth.org

ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

ClientEarth is funded by the generous support of philanthropic foundations, institutional donors and engaged individuals.

Brussels

Rue du Trône 60
5ème étage
1050 Bruxelles
Belgique

London

274 Richmond Road
London
E8 3QW
UK

Warsaw

ul. Żurawia 45
00-680 Warszawa
Polska

ClientEarth is a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London, EC4R 1BE, with a registered branch in Belgium, N° d'entreprise 0894.251.512, and with a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208