

September 2017

The control and enforcement of fisheries in the Republic of Ireland

Contents

Executive summary and recommendations.....	3
Introduction	5
1 The Irish fisheries enforcement framework	6
1.1 The organisation of fisheries controls	6
1.2 Enforcement.....	7
1.2.1 Provisional measures.....	7
1.2.2 Criminal sanctions.....	8
1.2.3 Administrative sanctions - the penalty point system	11
1.2.4 The national register of infringements	13
2 What is happening in practice.....	13
2.1 Controls.....	13
2.2 Infringements and sanctions.....	13
2.2.1 Criminal sanctions.....	13
2.2.2 Administrative sanctions.....	16
2.3 The case of EU vessels operating in the Irish EEZ	17
3 Discussion and recommendations	18
3.1 Ireland has not incorporated all of the requirements of the Control Regulation	18
3.2 Prosecutions are low; sanctions are not deterrent	19
3.3 Lack of transparency of fisheries enforcement information	20
Conclusion	21

Executive summary and recommendations

In 2009, the European Union (EU) adopted a new regulation, the "Control Regulation", to establish general rules and principles governing the control of fisheries across its Member States. This regulation entered into force in 2010 and places a number of enforcement obligations on Member States' competent authorities:

- Ensuring that appropriate measures are taken for every breach of the rules of the Common Fisheries Policy (CFP);
- Imposing sanctions which are effectively dissuasive in case of serious infringements;
- Establishing a penalty point system for licence holders and masters of fishing vessels who commit a serious infringement of the rules of the CFP;
- Entering into a national register of infringements all infringements of the rules of the CFP.

It is now seven years after the entry into force of the Control Regulation, and ClientEarth was unable to find an assessment of the extent to which the Republic of Ireland is complying with these requirements. Therefore, through desk-based research and stakeholders' interviews we endeavour through this case study to assess Ireland's degree of implementation.

The organisation of fisheries controls in Ireland is defined in the Sea-Fisheries and Maritime Jurisdiction Act 2006, which creates a Sea-Fisheries Protection Authority (SFPA). The SFPA is in charge of carrying out inspections, mostly on landings, in conjunction with the Irish Naval Service and the Air Corps for air/sea controls.

Once an infringement is discovered, the Irish enforcement system relies almost exclusively on a system of criminal proceedings and sanctions. Under this system, provisional measures can be applied, and a fishing vessel suspected of an infringement can be detained. Verbal warnings can be issued or, if it is justified by the nature, seriousness and extent of the infringement, prosecution can ultimately be sought. In this case, the sanctions which can be imposed are fines up to a maximum amount specified by the law; forfeiture of the catch, gear or vessel; suspension or revocation of the fishing licence; and, in very rare and severe case, imprisonment. At the moment, there is no legislation in Ireland allowing for the imposition of administrative sanctions such as fixed penalty notices.

Data on controls, inspections and on infringements detected is included in the annual reports of the SFPA; the latest publically available report concerns the year 2015. For that year, it shows that, compared to the number of inspections (2,502), only a few number of incidents were reported (35; an incident rate of 1.39%). These 35 incidents concerned 70 cases of infringements, as some incidents involved more than one infringement. The data provided on the 14 cases completed in 2015 show that the level of fines imposed varied greatly depending on whether the vessel concerned was Irish or not. The average fine for foreign-flagged vessels was 26,375 Euros - whereas it was 1,900 Euros for Irish vessels. Forfeit of catches or gears was imposed in 6 cases out of 14. Finally, it seems that in general there have been almost no cases of suspension or revocation of fishing licences.

In 2014, a statutory instrument introduced into Irish law the penalty point system for licence holders in case of serious infringements. It indicated that guidance on the implementation of this system would be published by the SFPA. Soon after its entry into force, the statutory instrument was challenged twice in front of the courts by fishers and, as a result, struck down. The two

judgments concerned are currently subject to appeal in front of the Irish Supreme Court and a decision on these cases is expected in 2017. In the meantime, the Irish legislator introduced a new statutory instrument to implement the penalty point system for licence holders. Perhaps as a consequence of the pending Supreme Court rulings, no penalty points are currently assigned to Irish licence holders.

Amongst the fishing sector, there seems to be a resistance against the EU penalty point system. Fishers' organisations argue that this is a "double-sanction" penalty, because on top of an immediate financial sanction there may be long term financial cost associated with the accumulation of penalty points. Some fishers' organisations also refer to the case of a Danish vessel which was caught operating illegally within the Irish waters by the Irish competent authorities. As a result, the Irish authorities requested the Danish authorities to assign six penalty points to the vessel. Denmark replied by arguing that a quota swap was made to account for the catches made by the guilty vessel a few days after the infringement took place and subsequently refused to assign it penalty points.

In addition, the Control Regulation requires Member States to also establish a penalty point system for masters of fishing vessels. In Ireland, there was one attempt to introduce such a scheme, but the legislation was, in the end, not proposed. The reasoning was that such a scheme would need to be introduced by means of primary legislation - an Act of the Irish Parliament or Oireachtas. This is a burdensome legislative process. At the time of carrying out this study, a proposal to begin the process to comply with the requirement has not been released.

The penalty point system is not the only requirement which is currently not implemented in Ireland. In this respect, we received contradictory information on the existence or not of a formal national register of infringements, as foreseen in the Control Regulation, in Ireland. In addition, there is no guidance on how to determine what constitutes a serious infringement of the CFP rules.

In light of these findings, this case study has three main recommendations:

- **Ireland must urgently incorporate all the requirements of the EU Control Regulation into its legal order.** There is no penalty point system for masters of fishing vessels, and the penalty point for fishing licence holders is not effectively implemented. In addition, the lack of guidance on what should be classified and dealt with as a serious infringement makes it impossible to assess whether Ireland is complying with its obligations to impose an effective, proportionate and dissuasive level of sanctions as required under the Control and IUU Regulations;
- The overall number of prosecutions is very low and the sanctions imposed are not high enough to be considered an effective deterrent. **Sanctions levels should be increased** to ensure that this requirement is met.
- Although Ireland has published several annual reports which contain up-to-date information on fisheries controls and enforcement, the latest information on the topic is not publically available. **Because increased transparency on fisheries enforcement information is a good tool to promote a culture of compliance and a level-playing field on controls and sanctions across the EU, Ireland should ensure that such reports are completed annually and made publically available.**

Introduction

Although the European Union (EU) has exclusive competence for the conservation of marine biological resources under the Common Fisheries Policy (CFP),¹ it shares with its Member States the competence regarding fisheries control and enforcement. It seems now to be generally accepted that, in this respect, the EU institutions are in charge of adopting general rules, which are then implemented by the Member States. The Member States are also responsible for applying sanctions in cases of infringements to the rules of the CFP.² The EU, as such, has no competence to oblige its Member States to all have the same level of sanctions. It can, nevertheless, encourage them to harmonise their systems.

Prior to 2010, huge discrepancies existed within the national control systems of EU Member States with regards to sanctions for fisheries infringements. It has been noted, for example, that *"the average fine for fishing without holding a fishing licence ranged from 63 Euros to 24,328 Euros in 2006"*,³ depending on the Member State where the infringement took place.

In 2009, the control system for fisheries in Europe went through a drastic change. Council Regulation (EC) 1224/2009 establishing a Community control system for ensuring compliance with the rules of the CFP - the "Control Regulation" - was adopted and entered into force on 1 January 2010.⁴ One of the objectives of the Control Regulation was to ensure that a level-playing field exists for EU fishing operators, including in the area of enforcement and sanctions. The regulation, through Title VIII on Enforcement, seeks better harmonisation of sanctions across EU Member States. To this end, it encourages the use of administrative sanctions for all infringements, including serious ones.⁵ It also foresees the introduction of a penalty point system when serious infringements are committed.⁶

According to a 2014 study,⁷ most EU Member States are predominantly using administrative sanctions to deal with fisheries infringements. Administrative sanctions allow Member States to implement the general enforcement requirements of the Control Regulation, including the penalty point system. Those which are using criminal sanctioning procedures very often also have administrative procedures in place for minor offences.

What makes the Republic of Ireland a special case is that it does not have an administrative sanctioning system in place for fisheries infringements. Enforcement relies only on criminal sanctions. In addition, the implementation of the penalty point system for serious infringements in this Member State is currently on hold, as two decisions of the Irish High Court have struck down the statutory instrument that introduced this system into the Irish legal order.⁸

Against that background, this case study will focus on the implementation to date of the enforcement requirements of the Control Regulation. It will also focus on the enforcement-

¹ Article 3 of the Treaty on the Functioning of the European Union: *"The Union shall have exclusive competence in [...] the conservation of marine biological resources under the common fisheries policy"*.

² http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuld=FTU_5.3.3.html.

³ 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.

⁴ Council Regulation (EC) n° 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

⁵ Article 90 (2) of the Control Regulation.

⁶ Article 92 of the Control Regulation.

⁷ Blomeyer & Sanz (2014), *Illegal, Unreported and Unregulated Fishing: Sanctions in the EU*, Study, European Parliament, p.37.

⁸ See: <http://www.independent.ie/irish-news/courts/manner-in-which-penalty-points-were-imposed-on-fishing-boat-contrary-to-fair-procedures-high-court-declares-34398445.html>.

related provisions of another important piece of fisheries legislation, aimed at fighting Illegal, Unreported and Unregulated (IUU) fishing, "the IUU Regulation".⁹ A general discussion on the implementation of these provisions can be found in another document, together with an EU-level analysis of the findings of five other case studies conducted in England, France, the Netherlands, Poland and Spain.¹⁰

1 The Irish fisheries enforcement framework

This section presents the legal and institutional framework under which fisheries inspections and enforcement are carried out in Ireland.

1.1 The organisation of fisheries controls

Under the Irish Constitution, the Oireachtas (the Irish Parliament) has exclusive law-making power. As such, it adopts primary legislation in the form of Acts. These Acts can, in turn, empower another body or person (for example a Minister) to adopt secondary legislation, usually called "statutory instruments". In addition, under the European Communities Act 1972, Ministers are empowered to enact statutory instruments in order to implement specific requirements or provisions of EU regulations and directives.

Having the status of primary legislation, the Sea-Fisheries and Maritime Jurisdiction Act 2006 is the main piece of Irish legislation dealing with the organisation of fisheries controls and enforcement.¹¹ It establishes a Sea-Fisheries Protection Authority (SFPA), which was formally created on 1 January 2007. The tasks of the SFPA are *"to secure efficient and effective enforcement of sea-fisheries law and food safety law; (...) to promote compliance with and deter contraventions of sea-fisheries law and food safety law; (...) to detect contraventions of sea-fisheries law and food safety law"*.¹² To that end, it has headquarters in Clonakilty and regional offices in the major fishing ports around Ireland.

The SFPA operates its inspections in cooperation with the Irish Naval Service and the Air Corps, with whom it has a service level agreement. The Irish Naval Service is tasked with the conduct of controls at sea, the Air Corps carries out aerial surveillance and the SFPA is in charge of inspections on landings and, in cooperation with An Garda Síochána (the Irish police), of roadside vehicles inspections. In addition to inspections at sea, the Naval Service also acts as the Irish Fisheries Monitoring Centre: it *"carries out monitoring and surveillance of all vessels equipped with a Vessel Monitoring System (VMS) that are operating in the Irish Exclusive Economic Zone (EEZ) and of all Irish vessels operating in any jurisdiction"*.¹³

Under Section 16 of the Sea-Fisheries and Maritime Jurisdiction Act 2006, various persons can have inspection powers and, as such, be called Sea-Fisheries Protection Officers (SFPOs):

⁹ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

¹⁰ <https://www.documents.clientearth.org/library/download-info/slipping-through-the-net-the-control-and-enforcement-of-fisheries-in-england-france-ireland-and-poland/>.

¹¹ Other important pieces of legislation include the Fisheries (Consolidation) Act 1959 and the Fisheries (Amendment) Act 2003 - this last Act transposed into Irish law the provisions of the United Nations Agreement on the Implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

¹² Sea-Fisheries and Maritime Jurisdiction Act 2006, Section 43 (1).

¹³ See: <http://www.military.ie/naval-service/organisation/specialist-units/fisheries-monitoring-centre/>.

- Officers of the Department of Agriculture, Food and the Marine (DAFM);
- Appointed persons from the SFPA, or other persons working for another body, which are authorised by the Minister;
- Members of the Permanent Defence Forces;
- Members of the Garda Síochána;
- Officers of Customs and Excise.

The powers of the SFPOs in the course of inspection proceedings are set out in Sections 17 and 18 of the Sea-Fisheries and Maritime Jurisdiction Act 2006. In a reply to a questionnaire sent by ClientEarth, the Irish authorities indicated that both the SFPA and the Naval Service have their own Standard Operating Procedure (SOP) for boarding and inspecting vessels.

Every year, the SFPA establishes a Fisheries Control Plan *"which outlines the benchmark requirements for inspections at sea by the Naval Service and surveillance by the Air Corps"*.¹⁴ Inspections are carried out following a risk-based analysis, which means that high risk vessels are inspected more often. Ireland also participates in some of the Joint Deployment Plans (JDPs) coordinated by the European Fisheries Control Agency (EFCA): the North Sea JDP, the Western Waters JDP and the North East Atlantic Fisheries Commission (NEAFC) JDP.¹⁵

1.2 Enforcement

As mentioned above, the Irish fisheries enforcement system relies almost solely on a system of criminal proceedings and sanctions, which are detailed in the Sea-Fisheries and Maritime Jurisdiction Act 2006.

1.2.1 Provisional measures

Under the Sea-Fisheries and Maritime Jurisdiction Act 2006, it is possible to detain a boat and persons in cases where:

- An SFPO suspects that an offence has been committed and the judge authorising the detention is satisfied that the SFPO has such suspicion and it is a reasonable one;¹⁶
- Proceedings have been or are about to be instituted against the master or other persons on board the boat and the judge requires the SFPO to detain the boat and these persons in a specified port;¹⁷
- The determination of an appeal or any other proceedings is pending.¹⁸

In the last two cases, a judge can order the release of the fishing vessel concerned if a satisfactory bond is provided.¹⁹

¹⁴ See: <http://www.sfpa.ie/CorporateAffairs/StrategicRelationships.aspx>.

¹⁵ See EFCA 2015 annual report at: <http://www.efca.europa.eu/en/content/annual-report-2015>.

¹⁶ Section 19 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

¹⁷ Section 20 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

¹⁸ Section 20 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

¹⁹ Section 21 (2) of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

2.2.2 Criminal sanctions

Before reaching the stage where they will decide to pursue a prosecution, SFPOs also have the choice to engage in so-called informal proceedings. These proceedings include verbal advices or warnings, which can be delivered by SFPOs of the SFPA or of the Naval Service. Until 2014, warning letters could also be sent to the offender, but this practice was suspended, following advice from the Office of the Attorney General.²⁰ If, upon assessment, the actions to remedy the situation are deemed by the SFPA to be insufficient, then more formal actions are pursued, which could be the serving of statutory notices, closures orders or prosecution. In cases dealing with fisheries conservation infringements, prosecution is the only enforcement tool.

In order to assess if an infringement will lead to a prosecution, SFPOs should have regard to "*the nature, seriousness and extent of the contravention detected*"²¹ and also take into consideration the "*Principles of good enforcement*". These principles are: proportionality, risk-assessment, transparency, consistency and prosecution. In addition, the General Guidelines for Prosecutors issued by the Director of Public Prosecutions must also be taken into consideration by the SFPA when deciding to prosecute a case.²² This document provides guidance for deciding if a case should be prosecuted or not. One question which must always be asked is "*Is there a public interest reason not to prosecute?*", as "*it is not the rule that all offences for which there is sufficient evidence must automatically be prosecuted*". To make that decision, a number of aggravating factors (such as premeditation, corruption or the fact that a conviction is likely to result in a significant penalty) have to be taken into consideration. Mitigating factors also exist:

- If the Court is likely to impose a very small or minimal penalty;
- Where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgment;
- Where the offence is a first offence: if it is not of a serious nature and is unlikely to be repeated.

Other factors can also be taken into account when making this decision.²³

If, after this assessment is conducted, it is deemed appropriate to prosecute the case, then the choice of the appropriate Court must be made.

In Ireland, for criminal cases, proceedings can be brought in two different Courts:

- The District Court, where summary or minor offences can be tried before a judge, without a jury;
- The Circuit Court, where indictable or major offences can be tried before a judge and a jury.

In principle, it is the Circuit Court which has jurisdiction for fisheries offences. But the Sea-Fisheries and Maritime Jurisdiction Act 2006 foresees that a judge of the District Court has jurisdiction to try a fisheries offence if:

²⁰ See: <http://www.sfpa.ie/Portals/0/corporate%20affairs/annual%20reports/2014/SFPA%20Annual%20Report%202014%20English.pdf>, p.19.

²¹ See: <http://www.sfpa.ie/CorporateAffairs/Customerservice/EnforcementPolicy.aspx>.

²² See: https://www.dppireland.ie/filestore/documents/GUIDELINES_-_Revised_NOV_2010_eng.pdf.

²³ See: https://www.dppireland.ie/filestore/documents/GUIDELINES_-_Revised_NOV_2010_eng.pdf, p.20.

"(a) the judge is of opinion that the facts proved or alleged against a defendant charged with such an offence constitute a minor offence fit to be tried summarily,

(b) the prosecutor consents, and

(c) the defendant (on being informed by the judge of his or her right to be tried by a jury) does not object to being tried summarily,

And, upon conviction under this subsection, the defendant is liable to a fine not exceeding 5,000 Euros and to the forfeiture specified in" Regulation 28 (6).

Most of the fisheries-related offences are listed in the Sea-Fisheries and Maritime Jurisdiction Act 2006 and in the Fisheries (Amendment) Act 2003. Regulation 11 of Chapter 2 of the 2006 Act states that "*unless otherwise provided by law, a person who contravenes or fails to comply with an obligation imposed on the person by a Community Regulation commits an offence*". The same applies to regulations adopted to give effect to the provisions of the CFP²⁴ and to national regulatory measures adopted to supplement the CFP.²⁵

In cases of offences related to a fishing boat or gear, the Act considers that, unless otherwise specified by the law, the persons that can be prosecuted are the Master, the owner of the boat and the owner of the fishing gear or equipment. In cases of offences related to the fish caught, the Act foresees that the persons that can be prosecuted are the master and owner of the boat, the buyer, handler, weigher, transporter, processor, person storing or documenting and seller of the fish.²⁶ There is no mention of the responsibility of the licence holder: under Irish law and the primary responsibility in case of fisheries offences lies with the master of the fishing vessel.

The range of fines which can be imposed by a Court for most common offences is specified in two tables found under Section 28 of the 2006 Act. The maximum amount of the fine depends on the length of the vessel. Table 1 of Section 28 is reproduced here as an example.

²⁴ Section 14 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

²⁵ Section 15 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

²⁶ See sections 11 (4) and (5), 14 (3) and 15 (3) of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

Reference Number	Provision	Fine on conviction on indictment not exceeding amount specified below		
(1)	(2)	(3)		
		Category 1 - sea-fishing boat of less than 12 metres in length overall	Category 2 - sea-fishing boat of 12 metres or more but not exceeding 18 metres in length overall	Category 3 - sea-fishing boat of more than 18 metres in length overall
1.	Section 11, 14 or 15 in so far as it relates to—			
	(a) a contravention relating to fish storage capacity of a sea-fishing boat,	€20,000	€50,000	€100,000
	(b) illegal nets or other equipment, or	€20,000	€40,000	€80,000
	(c) any other contravention or failure of compliance.	€10,000	€20,000	€35,000
2.	Section 8(2), 9(3) or 10(2).	€20,000	€50,000	€75,000
3.	Section 12 or 13.	€10,000	€20,000	€35,000

Figure 1: Fines - Provisions of Chapter 2 of the Sea-Fisheries and Maritime Jurisdiction Act 2006

The fines for other, more specific offences are also specified elsewhere in the 2006 Act or in other texts such as the Fisheries (Amendment) Act of 2003. For example, persons assaulting an SFPO in the exercise of their duties can be liable to a fine or to imprisonment.²⁷

Section 28 of the 2006 Act does not foresee imprisonment for the most common fisheries related offences. It states, however, that the Court can order the forfeiture of all or any fish and fishing gear. For most offences, as a consequence of a conviction, the Court will be obliged to order the forfeiture of:

²⁷ Section 25 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

- Any fish and fishing gear found on the boat to which the offence relates or in any other place where they may be, in case of conviction on indictment;²⁸
- Any fish unlawfully caught and any fishing gear used in the commission of the offence or to which the offence relates, in case of summary conviction.

In addition to the forfeiture, the Court can also decide to *"revoke or suspend, for such period as it sees fit, the sea-fishing boat licence granted in relation to the boat concerned"*.²⁹

1.2.3 Administrative sanctions - the penalty point system

In Ireland, it is possible to use administrative sanctions to deal with some minor offences. For example, fixed penalty notices exist for driving offences.³⁰ Their scope is nevertheless very restricted, as Article 34.1 of the Irish Constitution states that *"Justice shall be administered in Courts established by law by judges appointed in the manner provided by this Constitution (...)"*. In general, it is considered that, *"where an administrative body is empowered to impose variable large fines (...), the High Court must confirm the order, otherwise it would trespass on the judicial function"*.³¹

As of September 2017, no sanctions such as fixed penalty notices have been introduced for fisheries offences. In theory, this is not an issue, as the EU control-related legislation leaves the choice open to Member States regarding the use of administrative or criminal sanctions for fisheries infringements. Nevertheless, the EU system has been designed in a way that it relies primarily on administrative sanctions for Member States' enforcement. As a result, Ireland has experienced difficulties in implementing some of the provisions of the Control Regulation, especially as they relate to the penalty points system.

On 8 January 2014, the Minister for Agriculture, Food and the Marine issued S.I. No 3 of 2014 - European Union (Common Fisheries Policy) (Point System) Regulations 2014. Through this instrument, the Minister implemented the penalty point system for serious infringements foreseen in Article 92 of the Control Regulation into Irish law. It was indicated in this instrument that, in order to determine what constitutes a serious infringement which will entail the assignment of penalty points, the SFPA shall have regard to the criteria set out in Article 3(2) of the IUU Regulation and to guidance notes published by the SFPA.³² No guidance notes were issued when the instrument entered into force.

Soon after its entry into force, fishers challenged S.I. No 3 of 2014 in the Courts. The Irish High Court ruled on two of the cases in early 2016. In the first case, *O'Sullivan v. The Sea-Fisheries Protection Authority*,³³ the Court judged that S.I. No 3 of 2014 was invalid having regard to the provisions of the Irish Constitution. This was because some of this statutory instrument's provisions should not have been introduced through secondary legislation, they should have been introduced through primary legislation. In the second case, *Crayden Fishing Company*

²⁸ Section 28 (5) (b) of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

²⁹ Section 28 (7) (a) of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

³⁰ This is permitted under Article 37.1 of the Irish Constitution which states that: *"Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a Court appointed or established as such under this Constitution"*.

³¹ Reply to ClientEarth' questions by the SFPA.

³² Regulation 5 (2) of S.I. No 3 of 2014.

³³ *O'Sullivan & anor -v- The Sea-Fisheries Protection Authority &ors*, High Court case No 2015 2900 P of 15 January 2016.

Limited v. The Sea-Fisheries Protection Authority,³⁴ the High Court concluded that the manner in which points were assigned to the applicant's fishing licence was contrary to fair procedures.

As a result of these judgments, a new instrument was introduced on 1 March 2016 to implement the penalty point system in Ireland. S.I. No 125 of 2016 seeks to address the shortcomings identified by the High Court, especially in respect of the right to fair procedures. It also defines serious infringements as "*an infringement of the rules of the common fisheries policy mentioned in Annex XXX to the [Commission Implementing Regulation n° 404/2011] that is determined by the Determination Panel, on the balance of probabilities, to be serious having regard to the criteria and guidance notes referred to in Regulation 6 (3)*". So far, no guidance notes have been issued by the SFPA on how to determine what should constitute a serious infringement.

In the meantime, appeals were launched with the Irish Supreme Court by the SFPA. In the Crayden case, the appeal will concern the question of whether the procedures established under S.I. No 3 of 2014 constituted a breach of the right to fair procedures. In the O'Sullivan case, it will assess whether the 2014 statutory instrument was unconstitutional. It is expected that the judgement will be delivered in 2017.

The outcome of the cases is difficult to predict, as three possible situations could arise: either S.I. No 3 of 2014 will stand; or it will have to be replaced by a new statutory instrument or the existing (but not implemented) S.I. No 125 of 2016; or the judges will consider that primary legislation will have to be adopted in order to introduce the penalty point system in Ireland. In the meantime, the current Minister for Agriculture, Food and the Marine has displayed support to the establishment of a system where penalty points will be applied only after the criminal process for the offence has been conducted and resulted in a conviction in court.³⁵ If such system is indeed to be adopted in the future, it will give rise to concerns on the effective implementation of the Control Regulation in Ireland. Indeed, points stay on the licence for a period of three years after the date of the last serious infringement committed, if no other infringement is committed in the meantime.³⁶ Concretely, if a criminal prosecution takes place, it is likely to take some time before the sentence is pronounced, and the consequence might be that in the end, penalty points stay only a few weeks on the fishing licence, if they are attributed at all. This would make the entire system ineffective and deprive it from its deterrent function.

It is also a requirement for Member States under Article 92(6) of the Control Regulation to establish a penalty point system for masters of fishing vessels. So far, this system has not been introduced into Irish law. There was at least one attempt to do so,³⁷ but no legislation was, in the end, proposed. The main reason for this is that, in Ireland, the Oireachtas has the exclusive law-making function except in certain cases, for example when primary legislation (an Act of the Oireachtas or an EU regulation) contains enough principles and policies so that an appointed Minister can fill in the gaps by means of secondary legislation. Whereas Article 92(6) of the Control Regulation provides numerous details on how the penalty point system for licence holders should be implemented into national law, it merely states that "*Member States shall also establish a point system under which the master of the vessel is assigned the appropriate number of points as a result of a serious infringement of the rules of the common fisheries policy committed by him*". Therefore, it was assessed that, in order to be constitutional, the point system for masters of fishing vessels would need to be implemented into Irish law through

³⁴ Crayden Fishing Company Limited-v- Sea-Fisheries Protection Authority, High Court Judicial Review 2015 No 98 JR of 26 January 2016.

³⁵ See L. O'Keeffe (2016), "*The point system for fishing vessels - Dead in the water?*", 39(2), Dublin University Law Journal.

³⁶ Article 92 (4) of the Control Regulation.

³⁷ See: <https://www.agriculture.gov.ie/media/migration/customerservice/publicconsultation/RIASFMA2014201114.pdf>.

primary legislation - through an Act of the Oireachtas. Such Act has not, as of September 2017, been adopted.

1.2.4 The national register of infringements

According to Article 93(1) of the Control Regulation, "*Member States shall enter in a national register all infringements of the rules of the common fisheries policy committed by vessels flying their flag or by their nationals, including the sanctions they incurred and the number of points assigned*".

It was confirmed in the reply to ClientEarth' questionnaire that, although the SFPA Legal Case Management Unit maintains a database of infringements, there is no national register of infringements. This information contradicts the one provided by the Irish authorities to the European Commission in their five years' report on the implementation of the Control Regulation. In this document, they stated that such instrument was in place in Ireland.³⁸

2 What is happening in practice

This section describes what we know about what is actually happening in Ireland in relation to fisheries controls and enforcement. It further analyses these findings in light of the obligations found in the relevant pieces of EU and Irish legislation.

2.1 Controls

The SFPA reports that in 2015, over 2,502 inspections of fishing vessels were undertaken within the Irish EEZ,³⁹ an increase from 2014, when 2,308 inspections took place.⁴⁰ Out of this general number, more specific figures are provided by the SFPA: 530 Irish registered vessels and 548 foreign registered vessels were inspected by the Naval Service; 1,169 Irish vessels and 255 foreign registered vessels were inspected by the SFPA. The foreign registered vessels were from Belgium, Denmark, France, Germany, Lithuania, the Netherlands, Norway, Spain, Russia and the UK. The number of inspections on landings which can be extrapolated from these figures is unclear. In its report, the SFPA notes that "*the vast majority of SFPA inspections are undertaken at the point of landing*"⁴¹ - it may therefore reasonably be deduced that the SFPA conducted around 1,300 inspections on landing in 2015.

2.2 Infringements and sanctions

2.2.1 Criminal sanctions

It is difficult to find recent consolidated data on the number of infringements reported, and the subsequent sanctions, for fisheries violations in Ireland. These numbers are usually included in the SFPA annual reports, but the last publically available report is for 2015.⁴²

³⁸ See: <https://www.asktheeu.org/en/request/3715/response/12455/attach/34/IE%20Control%20Regulation%205yr%20Report%20Rev%201.pdf>.

³⁹ See: <http://www.sfpa.ie/Portals/0/corporate%20affairs/annual%20reports/2015/SFPA%202015%20Annual%20Report%20ENGLISH.PDF>, p.22.

⁴⁰ See: <http://www.sfpa.ie/Portals/0/Corporate%20Affairs/Annual%20Reports/2014/SFPA%20Annual%20Report%202014%20English.pdf>.

⁴¹ See: <http://www.sfpa.ie/Portals/0/corporate%20affairs/annual%20reports/2015/SFPA%202015%20Annual%20Report%20ENGLISH.PDF>, p.22.

⁴² See: <http://www.sfpa.ie/CorporateAffairs/Publications/AnnualReports.aspx>.

According to these reports, in 2011 83 cases of non-compliance with Sea-Fisheries Conservation legislation were dealt with. Out of these 83 cases, 62 resulted in formal warning letters being issued, 12 vessels were detained and 9 cases submitted to the office of the Director of Public Prosecutions (DPP).

In 2012, 117 warning letters were issued, 23 vessels were detained, 14 cases were forwarded to the office of the DPP and 5 cases were prosecuted in court. For the court cases, the total fines represented 60,750 Euros (an average of 12,150 Euros per case) and the total value of the catch and gear ordered by the court to be forfeited was 115,000 Euros. These court cases concerned incorrect logging of catch information, illegal fishing, absence of essential documentation and failure to provide a boarding ladder.

In 2013, 89 warning letters were issued, 24 vessels were detained and 7 court cases were completed. The court cases resulted in penalties of 134,000 Euros. Out of this figure, the value of the catch forfeited represented 70% (93,800 Euros); fines 25% (33,500 Euros) and gear forfeits 5% (6,700 Euros). The average level of fines was therefore 4,785 Euros. In addition, 37 files were forwarded to the DPP.

In 2014, 30 cases of non-compliance were identified. Out of these 30 cases, only 2 warning letters were issued, as the Irish competent authorities received advice from the Office of the Attorney General to no longer issue warning letters;⁴³ 13 vessels were detained; 11 files were forwarded to the DPP charging officer; and 4 incidents were still under investigation at the time of publication of the report. 10 cases were also judged in 2014.

In 2015, 35 incidents were reported, covering a total of 70 separate infringements. Out of these 35 incidents, seven vessels were detained; one file was transferred to the jurisdiction of a neighbouring Member State; one file was not proceeded; 21 files were forwarded to the DPP; and five files were still being treated at the time of preparation of the annual report. That year, 14 cases were also completed in court.

⁴³ See: <http://www.sfpa.ie/Portals/0/Corporate%20Affairs/Annual%20Reports/2014/SFPA%20Annual%20Report%202014%20English.pdf>, p. 17.

Cases completed in Court in 2015						
Vessel Nationality	Offence Date	Judgement	Judgement Date	Fine	Forfeiture Catch	Forfeiture Gear
Ireland	27/07/2007	Conviction	03/11/2015			
Ireland	01/02/2007	Conviction	29/10/2015	€7,000		
UK	19/02/2015	Conviction	27/07/2015	€500	€344,960	€55,000
Ireland	13/12/2013	Conviction	21/07/2015	€1,000		
Ireland	13/12/2013	Conviction	21/07/2015	€1,000	€7,000	
Ireland	07/05/2010	Conviction	14/07/2015	€0	€24,000	
Ireland	06/09/2013	Conviction	21/04/2015	€5,000	€39,000	
Ireland	31/05/2013	Conviction	31/03/2015	€0	€0	€0
Ireland	31/05/2013	Conviction	03/03/2015	€0		
Netherlands	22/11/2013	Conviction	27/03/2015	€35,000		
Netherlands	22/11/2013	Conviction	27/03/2015	€35,000		
Netherlands	22/11/2013	Conviction	27/03/2015	€35,000		
Ireland	23/05/2012	Conviction	17/02/2015	€0	€5,000	
Ireland	10/12/2013	Conviction	16/02/2015	€5,000	€21,750	

Figure 2: Cases completed during 2015⁴⁴

Slightly different numbers were provided by the Irish authorities in a table included in a public document, and reproduced below. There is no clear explanation on the differences between the figures provided, which nevertheless remain within the same ranges.

	Enforcement Cases progressed	Convictions	Fines	Forfeiture	Cases Dismissed	Before Courts	DPP Directed Not proceeding	Awaiting Direction
2007	77	26	€199,350	€341,650	3	14	21	13
2008	62	24	€75,500	€262,000	2	22	2	12
2009	23	10	€34,350	€127,270	1	7	3	2
2010	12	8	€51,500	€204,750		4		
2011	20	4	€18,000	€56,100	1	9	3	3
2012	38	7	€72,750	€186,996		18	5	8
2013	61	4	€8,500	€142,000		18	4	35

Figure 3: Enforcement actions progressed by SFPA, Naval Service and Air Corps⁴⁵

There was no publically available information on the suspension or revocation of any vessels' fishing licence, although this is a possible course of action outlined in Section 28(7)(a) of the

⁴⁴ See: <http://www.sfpa.ie/Portals/0/corporate%20affairs/annual%20reports/2015/SFPA%202015%20Annual%20Report%20ENGLISH.PDF>, p. 30.

⁴⁵ Source: Screening Regulatory Impact Analysis of the Proposal for a Bill to amend the Sea Fisheries and Maritime Jurisdiction Act 2006 to provide for Fixed Penalties for minor offences, a Points System for Masters of Fishing Vessels for serious offences and Quota Management Policy, p.27.

Sea-Fisheries and Maritime Jurisdiction Act 2006. ClientEarth received a response to its questions confirming that this provision is never applied, *"most likely due to the fact that Ireland prosecutes masters for breaches of sea-fisheries law. The master is not the holder of the fishing licence. Therefore, there would be no reason to suspend/revoke the licence of another person not on trial"*.⁴⁶

2.2.2 Administrative sanctions

As discussed above, the penalty point system as implemented into Irish law by S.I. No 3 of 2014 has been judged to be invalid and a new statutory instrument introduced to replace it. It has been confirmed by SFPA that so far, no penalty points have been assigned to fishing licence holders under the new S.I. No 125 of 2016. Besides the judicial calendar, the main reason for this lack of implementation is the fact that a number of those responsible for the process of assigning points have not yet been nominated.⁴⁷

Beyond the penalty point system issue, there has been some interest in Ireland in establishing a system which would allow for the immediate payment of fines when less serious fisheries infringements are detected. This would represent an 'in-between' approach, with verbal warnings at the beginning of the sanctions scale and criminal proceedings at the end.

On 19 November 2014, the Department of Agriculture, Food and the Marine issued a Screening Regulatory Impact Analysis of the Proposal for a Bill to amend the Sea Fisheries and Maritime Jurisdiction Act 2006 to provide for Fixed Penalties for minor offences, a Points System for Masters of Fishing Vessels for serious offences and Quota Management Policy.⁴⁸ In this document, it was proposed that *"in relation to minor offences of a summary nature, a person may be given an opportunity to pay a fixed penalty notice instead of being prosecuted but he/she must also retain the right to elect to go for trial to have his/her guilt determined in accordance with Article 38"* of the Irish Constitution. It was also proposed to introduce a point system for masters of fishing vessels, in order to implement the requirements of Article 92(6) of the Control Regulation at a time where the authorities thought that Ireland could face an infringement proceeding in front of the European Court of Justice for failure to implement this provision.⁴⁹

A public consultation followed. Submissions received from the industry underlined that *"the fear has always been that such a system [of fixed penalty notices] instead of offering an alternative to those offences which would previously have been dealt with via the Court system would instead mean that minor infractions, which could previously have been dealt with by means of a verbal or written warning, will now see the imposition of monetary fines"*.⁵⁰ The industry also voiced its opposition to the introduction, in its proposed form, of the points system for masters of fishing vessels. As a result of this consultation, the Bill was withdrawn.

⁴⁶ SFPA replies to ClientEarth' questionnaire.

⁴⁷ SFPA replies to ClientEarth' questionnaire.

⁴⁸ See: <https://www.agriculture.gov.ie/media/migration/customerservice/publicconsultation/RIASFMJA2014201114.pdf>.

⁴⁹ See: <https://www.agriculture.gov.ie/media/migration/customerservice/publicconsultation/RIASFMJA2014201114.pdf>, p. 23.

⁵⁰ See: <https://www.agriculture.gov.ie/media/migration/seafood/sea-fisheriespolicymanagementdivision/PublishedSFMJAConsultationResponses16022015.pdf>, p. 19.

2.3 The case of EU vessels operating in the Irish EEZ

In 2015, at a time when the penalty point system was still in force in Ireland under S.I. No 3 of 2014, an incident took place which highlighted the difficulty in implementing the requirements of the Control Regulation in a harmonised way throughout the EU.

A Danish vessel was found guilty of fishing without appropriate quota within the Irish EEZ.⁵¹ According to Article 3(1)(c) of the IUU Regulation and to Annex XXX of the Control Regulation Implementing Regulation, fishing without a quota can be considered a serious infringement, depending on the national criteria of the concerned Member States, and should lead to the assignment of 6 penalty points. The SFPA determined that this infringement was a serious one and decided to follow the procedure established under Article 126(5) of the Control Regulation Implementing Regulation, which states that: *"Where the serious infringement is detected in a Member State other than the flag Member State, the points shall be assigned by the competent authorities of the flag Member State (...) upon notification pursuant to Article 89(4) of the Control Regulation"*.⁵²

In accordance with these procedures, the SFPA subsequently notified the competent Danish authorities of the infringement and proposed the assignment of 6 penalty points to the holder of the fishing licence. Discussions then took place between the Irish and Danish authorities and the European Commission. On this occasion, the European Commission clarified that *"it is the responsibility of the coastal Member State to determine whether a serious infringement has been carried out by a vessel of another Member State operating in its exclusive fisheries. It is also the responsibility of the coastal Member State to advise the number of points to be assigned by the flag member State in respect of that serious infringement. The flag member State does not have discretion"*.⁵³ But, after these discussions, the Danish authorities indicated that a quota swap was made for the guilty vessel a few days after the infringement took place and subsequently refused to assign penalty points in this case.

This decision was met with outrage by the Irish fishing sector. The Irish Fish Producers Organisation underlined that *"Danish control authorities have now endorsed illegal fishing in the Irish EEZ"* and *"believes an unlevel playing field is now clearly operating"*.⁵⁴ The SFPA itself, in their response to ClientEarth's questionnaire, noted that this decision could ultimately lead the point system to *"be viewed as an unfair measure not applicable to foreign vessels in the coastal State's waters"*.

This case may not be as marginal as it seems: numerous foreign-flagged vessels operate in the Irish EEZ. In 2014, the Irish Marine Institute indicated that *"Ireland carries out 36% of fishing effort of vessels of 15m or greater in length inside the Irish" Exclusive Fisheries Zone*.⁵⁵

⁵¹ See: <http://www.inshore-ireland.com/News/danish-dismissal-of-fishing-violation-throws-penalty-system-into-disarray.html>.

⁵² Article 89 (4) of the Control Regulation: *"The competent authorities of the Member State having jurisdiction in the event of an infringement shall, without delay and in compliance with their procedures under national law, notify the flag Member States, the Member State of which the offender holds the citizenship, or any other Member State with an interest in following up the administrative action, criminal proceedings or other measures taken and of any definitive ruling relating to such infringement, including the number of points assigned in accordance with Article 92"*.

⁵³ See: <https://www.kildarestreet.com/debates/?id=2016-01-27a.380>.

⁵⁴ See <http://www.inshore-ireland.com/News/danish-dismissal-of-fishing-violation-throws-penalty-system-into-disarray.html>.

⁵⁵ See <https://www.agriculture.gov.ie/media/migration/customerservice/publicconsultation/RIASFMJA2014201114.pdf>, p. 11.

3 Discussion and recommendations

Based on the findings of this study, it can be assessed that Ireland has, so far, failed to properly implement all the requirements of the enforcement title of the Control Regulation. This section presents several recommendations to remedy the current situation.

3.1 Ireland has not incorporated all of the requirements of the Control Regulation

Looking at the enforcement title of the Control Regulation and comparing its requirements with the current requirements of Irish law reveals that a number of articles have not, as of September 2017, been implemented.

Despite the obligation laid down in Article 3(2) of the IUU Regulation and in Article 90(1) of the Control Regulation that the competent authorities of the Member States shall determine whether an infringement is a serious one or not *"taking into account the criteria such as the damage done, its value, the extent of the infringement or its repetition"*, there is no guidance issued on the subject by the SFPA. The lack of determination of what constitutes a serious infringement in light of EU control law has a cascading effect: it means it is impossible to assess whether Article 44 of the IUU Regulation and Article 90 of the Control Regulation on sanctions for serious infringements are effectively implemented and whether an effective, proportionate and dissuasive level of sanctions is applied. Article 44(2) of the IUU Regulation requires that, *"Member States shall impose a maximum sanction of at least five times the value of the fishery products obtained in committing the serious infringement"*. In addition, when fixing the sanctions, Member States *"shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned"*.⁵⁶ It is not clear whether this has happened in Ireland. So far, the judges have not been provided with guidance on how to fix the level of a fine to reflect damage done to the environment. The Irish authorities underlined that: *"Commentators in the environmental context have often made the argument for judicial training and sentencing guidelines which exist in the UK and must be followed by Courts. Awareness among the judiciary about the seriousness of environmental damage has gradually built up and is beginning to be reflected in the level of fines. It is likely that the same gradual process will have to take place in terms of damage to the marine environment as judicial training is unlikely"*.⁵⁷

Not only is guidance on how to determine what constitutes a serious infringement lacking but the penalty point system applicable to fishing licence holders found guilty of an infringement of the rules of the CFP remains unimplemented. In addition, as discussed above, there is no penalty point system in place for masters of fishing vessels. What this means, in concrete terms, is that, as of September 2017, the entirety of Article 92 of the Control Regulation is not implemented in Ireland. It must be underlined that this whole issue is not entirely dependent on the good will of the Irish government. The Irish Supreme Court, which will hopefully judge the Crayden and O'Sullivan cases this year, will provide directions on how to implement the point systems in Ireland. But, overall, the evidence we have found suggests that Ireland has been slow in its implementation: the Control Regulation entered into force in 2010, its implementing regulation in 2011, and the first attempt to introduce a point system into Irish law was only made in 2014. It also seems that this measure has not been understood by the Irish fishing sector, with the sector

⁵⁶ Article 90(4) of the Control Regulation.

⁵⁷ SFPA replies to ClientEarth's questionnaire.

challenging it in Courts and, as a result, placing additional pressure on the Irish competent authorities, which has also delayed its implementation.⁵⁸ Additionally, the obligation in Article 93 of the Control Regulation to establish a formal national register of infringements has also not been fulfilled.

This national non-compliance has not gone unnoticed by authorities in Ireland. In its 2014 Regulatory Impact Analysis for a Proposal for a Bill to introduce a penalty point system for masters of fishing vessels, the Department of Agriculture, Food and the Marine noted, with respect to the assessment of the "Do Nothing" scenario, that: *"The EU Commission has written to the State on a number of occasions seeking an implementation date. Failure to adopt the provision will certainly result in infringement proceedings in the European Court of Justice to which we will have no defence. A negative judgment will cost the State significantly in lump sum and ongoing fines. The do nothing option is not tenable"*.⁵⁹

There is a real likelihood of infringement proceedings against Ireland for failure to implement some of the requirements of the Control Regulation. It has been noted during a January 2016 debate in the Oireachtas that Ireland already *"has a pilot infringement case taken by the European Commission regarding the delay in implementing a points system for masters"*.⁶⁰ Given the fact that the penalty point system for masters is still not implemented, infringement proceedings are becoming increasingly likely.

The only logical recommendation arising from our research would therefore be for Ireland to introduce the obligations set out in the Control Regulation into its national law as a matter of priority and at the earliest possible opportunity. The implementation of these provisions should be made in a way which will not render them ineffective - the attribution of penalty points to licence holders and masters of fishing vessels should not be dependent on the outcome of criminal cases likely to last several years.

3.2 Prosecutions are low; sanctions are not deterrent

It is an obligation under Article 89(1) of the Control Regulation that Member States ensure *"that appropriate measures are systematically taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons suspected of a breach of any of the rules of the common fisheries policy"*.

For example, in 2014, a total of 2,308 inspections took place. As a result, 30 cases of non-compliance covering a total of 75 infringements were dealt with. Out of these 30 cases, 13 vessels were detained and 11 files forwarded to the Director of Public Prosecutions. Concretely, this means that in 2014, there was a 1% likelihood that an inspection would in the end lead to a sanction being imposed. This low sanction to inspection ratio suggests that Ireland is not meeting its requirement to systematically take measures against suspected breaches of the CFP.

Article 89(2) of the Control Regulation states that *"the overall level of sanctions and accompanying sanctions shall be calculated, in accordance with the relevant provisions of*

⁵⁸ See for example: <http://fishingnews.co.uk/2015/08/assistance-sought-from-fishing-industry-for-judicial-review-on-penalty-point-system-in-ireland/>.

⁵⁹ See: <https://www.agriculture.gov.ie/media/migration/customerservice/publicconsultation/RIASFMJA2014201114.pdf>, p. 23.

⁶⁰ See <https://www.kildarestreet.com/debates/?id=2016-01-27a.380>. A pilot infringement case is a scheme implemented by the European Commission to resolve compliance problems without having to resort to infringement proceedings. If the case is not solved within a certain timeframe, then infringement proceedings can be opened.

national law, in such way 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". The exact number of infringements discovered by the inspection authorities in Ireland is not known, as only cases which have led to warnings or transmission of the file to the Director of Public Prosecution are mentioned in the annual reports. However, it can be assumed that it is larger than the number represented by the last figures. It is clear that not all the infringements result in action by the authorities and when they do so, enforcement in Ireland is complicated by the fact that there is no middle-ground between an oral warning and a court case. The likelihood of being sanctioned is therefore extremely low and when this happens, the sanction is most likely to take the form of a warning. This does not fulfil the requirements of Article 89 of the Control Regulation. Only the most severe cases are prosecuted, and even then, the level of fines is very low - the forfeiture of the boat, gear and/or fish typically represent the largest proportion of the sanction. In addition, because the master of the fishing vessel is, under Irish law, the one against which cases are brought (instead of the licence holder), there has been almost no case of fishing licences being revoked or suspended by a judge.⁶¹

Our recommendations on the back of these findings are that, firstly the possibility to have a form of "intermediate sanction" for infringements that are too serious for warnings but not serious enough for court cases should be introduced into Irish law. The idea is that these would be fit to deal with most common infringement cases without too much delay. Secondly, sanction levels should be increased and clarified in order to ensure that the obligations under Article 89 of the Control Regulation are being effectively and consistently met across Ireland. To that end, guidance could be issued to competent authorities and judges.

3.3 Lack of transparency of fisheries enforcement information

There is no recent publically available data on the number of fisheries infringement cases arising in Ireland. The most reliable source of information on this topic is the Annual Report of the SFPA, which is usually published on the website of this authority.⁶² However, in September 2017, at the time ClientEarth's research was conducted, the available annual reports only covered the years 2007 to 2015, and the annual report for 2016 was still not available for the public. As a consequence, it is difficult to assess the most recent trends regarding the enforcement of fisheries laws in Ireland. More recent reports must nevertheless exist - as it is an obligation for the SFPA to prepare annual reports related to the performance of its function "*not later than 3 months after the end of each financial year*".⁶³ These reports should, in order to enhance transparency and accountability, be published on the website of the SFPA.

As fishers across the EU are complaining about the absence of a level-playing field in the enforcement of fisheries regulations, there is certainly an interest in making this kind of data more transparent. Publishing consolidated and reliable data on fisheries controls and sanctions across the EU might be a difficult process in the beginning, but will, in the end, benefit all stakeholders. If inequalities in the treatment of infringements become exposed, this should encourage competent regional and local authorities to align the level of sanctions (upwards, in

⁶¹ The fact that the master is the one against which prosecution arise may also lead to further concerns in light of the implementation of the penalty point system. In its reply to ClientEarth' questionnaire, the SFPA noted that: "*we have yet to have a case heard against a Master where points have been imposed on the licence. It will be interesting to see if the judge considers that a penalty has already been imposed on the master*". This "double-sanction" argument is very often heard from fishers and likely to be invoked again in the future.

⁶² <http://www.sfpa.ie/CorporateAffairs/Publications/AnnualReports.aspx>.

⁶³ Regulation 65 (3) of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

most cases) that they are imposing on fishers. This will help to achieve a level-playing field which will increase "buy-in" and make fishers more likely to respect the rules. Consolidated and reliable data will also help other stakeholders, such as researchers, NGOs and scientists, to determine whether policies are working or not. For example, if there is a high infringement rate on one particular requirement of the EU or national legislation, then lessons could be drawn from that: perhaps the rule is too complex and not understood and training and guidance should be provided; or perhaps the authorities should put more effort and means into ensuring compliance with these particular obligations.

Conclusion

This case study illustrates the difficulty that many Member States in the EU are facing in trying to implement an harmonised system of sanctions for fisheries offences across Europe. Control and enforcement are issues which lie at the boundary between what can be achieved at EU level through the CFP and what is the responsibility of the Member States to achieve through their national laws. Finding the appropriate balance between the need for greater harmonisation and the obligation to take into account the specificities of the legal system of each EU Member State is an ongoing challenge.

In the meantime, Ireland has largely failed to implement the enforcement requirements of the Control Regulation and must remedy this situation as soon as possible. Not only could the current situation lead to the Commission opening infringement proceedings against this Member State, but it also severely undermines the level-playing field needed between EU Member States to effectively implement the Control Regulation and establish a culture of compliance amongst fishers.

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