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DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES
RESOURCES
LEGAL MATTERS

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REPORT

Subject: **Assessment of the Member States' sanctioning systems for infringements of CFP rules**

This Report summarises the main findings of the project team on the assessment of the Member States (MS) sanctioning systems for infringements of the Common Fisheries Policy (CFP) rules. It is accompanied by a detailed analysis for each coastal MS of the applicable rules and practice of sanctioning fisheries infringements (Annex I) and a comparative table with effectiveness indicators (Annex II).

1. Background and objectives of the project

To remind the context, the project was set-up by Management in December 2013 to perform an assessment of the MS sanctioning systems in light of applicable EU rules. The primary motivation for this project was the need to ensure consistency between the EU's external and internal Illegal, Unreported and Unregulated fishing (IUU) policy. Given that externally the Commission scrutinises strictly the fisheries enforcement legislation and practice of third countries in the IUU cooperation process, it was necessary to verify if EU MS' sanctioning systems are compliant with the same standards. Additional reasons for this project were linked to both the ongoing evaluation of Regulation (EC) No 1224/2009 (the Control Regulation) and the performance of the Commission's monitoring task on the application of EU law.

2. Relevant EU legislation

Despite not being harmonised at EU level, national sanctions and enforcement actions in the CFP area are subject to the general rules and principles of EU law such as effectiveness, proportionality and dissuasiveness and to some specific CFP rules.

The main CFP legal texts relevant in this context are Title VIII of the Control Regulation together with the implementing rules laid down in Title VII of Regulation (EU) No 404/2011 and Chapter IX of Regulation (EC) No 1005/2008 (the IUU Regulation).

The most relevant requirements can be summarised as follows:

- Article 89(1) of the Control Regulation stipulates that the MS shall ensure that appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against natural or legal persons suspected of a breach of any of the CFP rules;

- Pursuant to Article 89(2) of the Control Regulation, sanctions shall effectively deprive those responsible of the economic benefit of the infringements and produce results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind;
- Article 90(1) of the Control Regulation and Articles 3 and 42 of the IUU Regulation define infringements that shall be qualified serious according to the criteria established at national level by each MS;
- Serious infringements of the CFP rules require an enhanced follow-up by national authorities and sanctions that are calculated taking into account the value of fisheries products obtained from the infringement or of the prejudice to the fishing resources and the marine environment;
- Article 92 establishes a point system for serious infringements of the CFP rules applicable to fishing license holders and requires MS to set up such a system for masters;
- Finally, under Article 93 of the Control Regulation, MS are obliged to enter in a national register all infringements of the CFP rules committed with vessels flying their flag or by their nationals, including the sanctions imposed and the number of points assigned.

3. Scope and methodology of the assessment

The project had to analyse the MS' sanctioning legislation and practice for fisheries infringements.

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4. Key findings

Two categories of findings result from this exercise. The first category pertains to the **shortcomings of the CFP legislation on sanctions**, which may be seen as undermining the effectiveness of enforcement actions against illegal fishing in the EU, or at least impairing the Commission's prospects to address such ineffectiveness via EU compliance proceedings. This category is of course most relevant for the on-going evaluation of the Control Regulation.

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4.1. Findings relating to the CFP legal framework on sanctions

To start with, the **CFP legal framework does not provide for harmonised rules on sanctions for breaches of CFP rules**. This is mainly due to the lack of political will on the side of MS to accept uniform sanctioning legislation in this area and, in respect of national sanctioning systems founded principally on criminal law, due to a lack of a clear legal basis in the Treaties for the harmonisation of criminal sanctions.¹ The lack of harmonised sanctions is a reality in many other Union policies, not only in the CFP.

¹ With the Lisbon Treaty, there was some progress with the legal base for establishing minimum rules but limited to the following criminal law areas: terrorism, human trafficking, drug trafficking, arms trafficking, money laundering, corruption, counterfeiting means of payment, computer crime and organised crime.

However, in the CFP field, it appears that certain stakeholders, and in particular the European Parliament (EP) and/or our international partners, expect a higher degree of uniformity of sanctions within the EU. These expectations may be linked to the exclusive EU competence for the conservation of marine biological resources: since the CFP regulates fishing and connected activities in a uniform manner within the EU and all operators have to respect the same rules, the expectation is that they should all be treated in the same manner when in breach of these rules.

Nonetheless, in the absence of uniform sanction rules at EU level, each MS is applying its own national laws and procedures, with very different results. These different levels of sanctions cannot be objected to as non-compliance with EU law since MS have wide discretion in setting their rules on sanctions and are not bound to respect a "minimum benchmark". Most CFP rules relevant in this context revolve around the general requirement for effective, proportionate and dissuasive sanctions, but provide **no clear benchmarks or types and (minimum) levels of sanctions** that could be seen as "effective, proportionate and dissuasive". For example, it is not clear whether warnings, which are extensively used in some MS, can be acceptable as an "effective, proportionate and dissuasive" sanction for CFP infringements.

Even when more concrete indications are given about the calculation of sanctions, the concepts used are not defined, thus different MS have different understandings of their meaning in practice. For example, there are **no definitions for concepts such as "economic benefit derived from the infringement", "value of prejudice to the fishing resources and the marine environment" or "value of fishery products obtained by committing the infringement"**.

Moreover, a **common definition of offences to the rules of the CFP is also missing**. Particularly worrying is **the lack of a harmonised catalogue of serious infringements**, despite the appearance created by Article 90(1) of the Control Regulation and Articles 3 and 42 of the IUU Regulation of the existence of such catalogue. In reality, the infringements listed in the said articles are only "potentially serious" as it is left up to each MS to determine the criteria for qualifying an infringement as serious.

This means that 28 different catalogues of serious infringements of the rules of the CFP are possible. This is a significant triggering factor for weaknesses we encounter in the enforcement of CFP rules within the EU and in particular the application of the point system (which in itself could have been a unifying element for sanctioning CFP infringements across EU). Apart from internal consistency issues and the risk of even more unequal treatment across the EU, for example, for access to the European Maritime and Fisheries Fund (EMFF) funding, the absence of a common EU list of serious infringements may also raise issues of compliance with international obligations² and possibly weaken our position in dialogues with IUU non-cooperating countries.

The CFP legal framework is also **vague regarding the existence of an obligation to apply preventive measures** (the so called "immediate enforcement measures") in case of suspected

² See Article 21(11) of the UN Fish Stocks Agreement.

serious infringements of the CFP rules. As some events have showed recently (*i.e.* Santa Isabel infringements in NAFO), this may be quite detrimental for the EU's compliance record with internationally agreed rules.

With regards to the **legal framework on the point system**, it is not clear whether points are applicable to the licence holder in case where the serious infringement in issue concerns an obligation addressed to the master of the vessel, *e.g.* logbook requirements. One other specific provision that could benefit from more clarity in a possible revision of the Control Regulation is the **scope of application of the point system for masters**. Under current rules, MS are requested to establish the point system under which "the master of a vessel is assigned the appropriate number of points as a result of a serious infringement of the CFP rules". It is therefore understood that such a system should cover both nationals and non-nationals. However, no indications exist on how this system is supposed to operate, therefore each MS may have completely different rules on this. It is thus unclear how points attributed to a master by a MS other than his own should be treated in his country of origin, *e.g.* when, how, with what consequences. It would be therefore good in the future to provide at least certain minimum rules on the functioning of the masters' point system.

4.2. Findings about the effectiveness of MS sanctioning systems for infringements of CFP rules

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The following general findings are worth highlighting.

- All MS³ have in place a legal framework (more or less developed) for sanctioning CFP infringements.
- **Levels of sanctions are very different** from one MS to another. This comes as no surprise given that there is no harmonisation of sanctions for infringements of CFP rules in the EU, the applicable EU standard in this respect being the general requirement for effective, proportionate and dissuasive sanctions, leaving the type and level of sanctions entirely to the MS.

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- In most MS, the **economic benefit derived from the infringement** is normally an element considered for the purpose of calculating the sanctions. [Redacted text]

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- On the **implementation of the point system for serious infringements**, significant deficiencies still remain both with respect to the national legal framework, but more importantly with the application in practice. [REDACTED]

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5. Classification of MS according to risk of ineffective sanctioning of infringements of CFP rules

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6. Recommendations

Regarding the project's **findings about the CFP legal framework on sanctions**, the recommendation for Management is quite straightforward: revise the Control Regulation (and partially also the IUU Regulation) in order to address the current gaps in the EU legal provisions on sanctioning. It is clear that in the absence of legislative action in this respect, there cannot be any significant progress in the direction of more effective sanctions against infringements of the CFP rules across EU MS. Such changes should at least address, in the order of importance, the lack of:

- A common definition of offences to the rules of the CFP and in particular of serious infringements;
- Clear benchmarks or at least minimum types and levels for what means "effective, proportionate and dissuasive" sanctions;
- Definitions for concepts such as "economic benefit from the infringement", "value of prejudice to the fishing resources and the marine environment";
- Clear conditionality for granting fishing authorisations for fishing outside EU waters on past compliance record;
- Clear obligation to apply "immediate enforcement measures" (otherwise preventive measures) in case of serious infringements.

As regards **deficiencies found in the MS sanctioning systems**, operational follow-up is possible either by way of infringement proceedings (preceded by the EU Pilot stage) or by using alternative compliance tools (e.g. action plans).

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Members of the project team:

[Redacted list of names]

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