

EU Fisheries Control System factsheet

Without effective sanctions the Control Regulation has no purpose

Importance of sanctions

An effective enforcement system is one of the key factors in ensuring that fishing activities are sustainable and that the long-term future of the fishing sector is assured. Applying sanctions at effective, dissuasive and proportionate levels, and ensuring that these sanctions take into account the damage done to the marine environment are crucial steps to ensure that the objectives of the EU Common Fisheries Policy (CFP) are ultimately met.

Fishers engaged in illegal, unreported and unregulated (IUU) activities will continue to do so as long as their revenue exceeds their costs, as these activities are often profitable. Because of their lower operating costs, IUU fishers not only gain an unfair economic advantage over legitimate fishers but their actions undermine stock management. It is therefore key that sanctions for infringements of the rules of the CFP are really deterrent. Indeed, if only warnings or negligible fines are imposed, there is a risk that offenders regard such sanctions as a basic cost of doing business.

An effective sanctioning system is also a duty under international law. The United Nations Convention on Law of the Sea (UNCLOS) provides that *“every State shall exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”*.¹

In 2015, the International Tribunal for the Law of the Sea, in an advisory opinion on IUU fishing,² ruled that under UNCLOS *“the flag state must adopt the necessary administrative measures to ensure that fishing vessels flying its flag are not involved in activities which will undermine the flag state’s responsibilities under the convention [UNCLOS]”*. According to the Tribunal, the flag State *“has the obligation to include in [its laws] enforcement mechanisms to monitor and secure compliance with these laws and regulations”* It also underlined that *“sanctions applicable to the involvement in IUU fishing activities must be sufficient to deter violations and to deprive offenders of the benefits accruing from their IUU fishing activities”*.

The EU and its Member States have therefore a responsibility, both at the European and at the international level, to ensure that an effective sanction system is in place for EU-flagged vessels and nationals.

What are the current sanctioning requirements

Under the current Control Regulation,³ Member States have the following obligations:

- Ensuring that appropriate measures, including administrative action or criminal proceedings, are systematically taken for every breach of the CFP, whether it is a serious infringement or not (Article 89.1). Indeed, the Control Regulation operates a distinction between infringements and *serious* infringements of the rules of the CFP. An infringement to the rules of the CFP is considered as serious if it fulfils certain criteria defined at the national level by the Member States themselves;
- Imposing effective sanctions that are dissuasive for serious infringements of the CFP’s rules (Article 90). These sanctions can be administrative or criminal.

¹ United Nations Law of the Sea UNCLOS Article 94.1.

² ITLOS Case 21 <https://www.itlos.org/en/cases/list-of-cases/case-no-21/>.

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.

- Establishing a penalty point system for licence holders and masters of fishing vessels who commit a serious infringement of the rules of the CFP (Article 92).
- Establishing a national register of infringements listing all infringements of CFP committed by vessels flying the flag of the Member State or by their nationals (Article 93).

What is the problem with the current sanctioning system?

Even though the Control Regulation has been in place since 2010, there has been a lack of implementation of its enforcement provisions. Very few Member States have issued sanctions that are truly effective, proportionate and dissuasive. Recent case studies conducted by ClientEarth on the enforcement systems of several Member States found that the number of sanctions imposed for serious infringements was low, and the level of these sanctions did not meet the criteria set in the Control Regulation.⁴

In 2017, the Commission itself recognised that *“enforcement, especially concerning sanctions and point system, follow up of infringements [...] are the areas that show the biggest shortcomings”*.⁵ In the 2018 impact assessment that the Commission released together with the proposal for a revised Control Regulation,⁶ it was noted that the *“current control system does not effectively promote a culture of compliance and significant loopholes have emerged in the implementation of current enforcement rules”*. The Commission recognised that in one Member State an infringement can lead to prosecution, whereas in another Member State it will not be prosecuted at all. This runs counter to the objectives of the CFP and undermines the establishment of both a culture of compliance and of a level playing field in the EU. In addition, the Commission stated that *“when sanctions do not ensure that, as a minimum, the perpetrator is deprived of economic benefits of the illegal activity, recidivism is significant, resulting in a negative impact on the environmental resources and ultimately on society”*.

The Impact Assessment found that the penalty point system introduced for serious infringements of the rules of the CFP was not fit for purpose. As Member States are using different national criteria to determine if an infringement is serious or not (and entails therefore the administration of penalty points), EU fishers are allocated different number of points for the same infringement, depending on where the infraction takes place.⁷

A 2017 report from the European Court of Auditors (ECA)⁸ also noted that *“the EU did not have a sufficiently effective systems for fisheries controls in place to support the success of the CFP”*.⁹ This report also stated that the sanctions applied were not always dissuasive, that the implementation of the point system was not equal across Member States and even within the same Member State. This resulted in a lack of a level playing field for EU operators.

Similarly, the 2016 Report from the European Parliament *“How to make fisheries controls in Europe uniform”*¹⁰ also called on Member States to ensure that sanctions were deterrent and on the European Commission to consider the development of a harmonised minimum-level penalty for serious infringements of the rules of the CFP.

⁴ ClientEarth Slipping through the net: The control and enforcement of fisheries in France, Ireland, the Netherlands, Poland, Spain and the UK (England), September 2017.

⁵ Commission Staff Working Document SWD (2017) 134 Final, p.18.

⁶ Commission Staff Working Document Impact Assessment Accompanying the document Proposal for a Regulation Of The European Parliament and of the Council Brussels, 30.5.2018 SWD(2018) 280 final

⁷ Idem.

⁸ European Court of Auditors (ECA) special report No 08 EU fisheries control: more efforts needed.

⁹ Idem, p. 7.

¹⁰ European Parliament Report 2015/2093 (INI), How to make fisheries controls in Europe uniform?

There are therefore two issues that should be tackled through this revision process and beyond: the lack of harmonisation of sanctions across the EU as well as the lack of implementation of the enforcement provisions of the Control Regulation.

What is the Commission proposing for the revised Control Regulation?

The Commission's proposal moves the enforcement provisions of the IUU Regulation¹¹ into the new Control Regulation, opening up the current sanctioning system for revision.

The proposal distinguishes between infringements that are inherently serious, and other serious infringements of the CFP, whose seriousness should be assessed according to a list of criteria set in the revised Control Regulation. In addition, it proposes to use mandatory administrative sanctions in case of serious infringements and sets minimum levels of fines for those. It further clarifies the rules applicable to the penalty point system and makes explicit that any point assigned by the coastal State has to be enforced by the flag State.

Recommendations

In order to create a culture of compliance, it is key that the current provisions of the penalty point system, serious infringements, immediate enforcement measures and accompanying sanctions are strengthened, not weakened. We therefore recommend supporting the Commission's proposal on these aspects. An EU list of objective criteria to determine if an infringement is serious or not and the obligation to sanction serious infringements through administrative penalties whose minimum levels will be set up by EU law will ensure the much-needed harmonisation of sanctions across the EU. The other amendments proposed by the Commission clarify the current rules and will therefore ensure that they are more consistently implemented by the Member States.

In addition to these provisions, we recommend changing the list of serious infringements as follows:

- Add *"turning off Automatic Identification System (AIS) transmitters"* to the list as well as to Annex III - if turned off for a legitimate reason such as operating in areas with high levels of piracy where maritime security agencies recommend turning off AIS, the captain of a vessel should notify the flag State and/or the coastal State;
- Amend the serious infringement *"supplying services to operators connected to a vessel engaged in IUU fishing"* to *"benefitting from, supporting or engaging in IUU fishing including as operators, effective beneficiaries, owners, logistics and service providers, including insurance providers and other financial service provider"*;
- Add a serious infringement for licence holders and masters of fishing vessels who are not fulfilling their obligations to mitigate against the accidental catch of sensitive species.

In addition, to ensure that the implementation of the future Control Regulation is more successful than the current Control Regulation, we urge to include the following provision to Article 102:

- *"5. If the Member State fails to remedy the situation and act on the shortcomings in its control system, the Commission shall start an investigation with the aim to start an infringement procedure if the Member State fails to act"*.

[Read the full NGO position paper](#)

¹¹ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.