



COMMISSION OF THE EUROPEAN COMMUNITIES

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98/ 0170 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

**amending Regulation (EEC) No 2847/93 establishing a control system applicable
to the common fisheries policy**

(presented by the Commission)

EXPLANATORY MEMORANDUM

A recent communication from the Commission to the Council (COM(98)92 of 19 February 1998) stated that although considerable progress has been made in the field of fisheries monitoring, further advances should and could be made in the short term. Discussions in the Council have revealed the importance the Council attaches to improving fisheries monitoring. There is also broad agreement with the Commission's appraisal of the situation and the solutions it proposes.

The proposed solutions include adjustments to Council Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy, adopted in 1993, needed to take account of the lessons learned from applying the Regulation since then. The proposed adjustments thus address some clearly identified shortcomings.

The aim is to improve transparency and cooperation among Member States and with the Commission, to ensure fairer and more effective monitoring in the context of relations with non-member countries, and to exploit more fully the opportunities afforded by cross-checking different sources of information, particularly by introducing more checks after landing.

The extent of coordination problems, such as those associated with vessels from non-member countries, has prompted the proposal of two new Titles containing both existing and new provisions and forming complete and consistent instruments. Grouping the other major aspects in this way would be liable to unbalance the set of texts as a whole and is therefore not appropriate. The proposed amendments therefore affect a set of Articles under the existing Titles.

In addition to the major aspects to be improved, other provisions are intended to rectify a specific shortcoming which has been at the root of problems that have cropped up in recent years and are sufficiently serious to warrant changes to the legislation.

Generally speaking, the proposed amendments attempt to keep the costs incurred, for both the industry and the authorities, to the strict minimum needed to ensure real and substantial improvements in the monitoring of fishing activities. They also focus on substantive matters and do not deal with details better covered by implementing regulations. The proposals stay as close as possible to the existing Community regulatory provisions in order to capitalise on the progress achieved in other fields and harmonise the rules wherever possible.

This draft represents only one part of the improvements needed in the monitoring of fisheries. Even at strictly regulatory level, other texts will have to be adjusted, particularly the market regulations. Implementing regulations will therefore have to be adopted or adjusted in consequence.

However, adjustment of the legislation is merely one aspect of a programme to improve monitoring, for which the above COM(98) 92 sets 2000 as a deadline; this deadline is accepted as a useful marker. A series of other measures will have to be implemented and the Commission will be drawing up a detailed plan of action for the next three years.

Proposal for a
COUNCIL REGULATION (EC) No ...
of ...
amending Regulation (EEC) No 2847/93 establishing a control system applicable
to the common fisheries policy

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee,

Whereas practice in fisheries and in the transport and marketing of fishery products has evolved; whereas monitoring arrangements should therefore be adapted accordingly; whereas various shortcomings in Council Regulation No 2847/93¹ as last amended by Regulation (EEC) No 2635/97² should therefore be remedied;

Whereas one of the basic requirements on masters of fishing vessels for control purposes is to record the amounts of different species held on board; whereas this requirements should be simplified; whereas, therefore, Article 6 of Council Regulation No 2847/93 should be amended and Article 5 of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities³, as last amended by Regulation (EEC) No 3483/88⁴, should be repealed;

¹ OJ L 261, 20.10.1993

² OJ L 356, 31.12.1997

³ OJ L 207, 29.07.1987, p.1.

⁴ OJ L 306, 11.11.1988 p.2.

Whereas controls on fishery products after landing should be reinforced; whereas the information about fishery products referred to in Article 9 of Regulation (EEC) No 2847/93 should be available from the moment of landing until the final marketing stage; whereas sales notes and take-over declarations should contain this information for the purposes of controls;

Whereas transshipment operations and, in general, any operations involving joint action by several vessels in Community waters have caused considerable control problems in some fisheries; whereas such operations should be made conditional on compliance with the control procedures laid down;

Whereas it should be ensured that the Commission has direct access to the databases updated by the Member States so that it can efficiently carry out the control tasks entrusted to it under Regulation (EEC) No 2847/93;

Whereas the monitoring, inspection and surveillance measures in this Regulation applicable to fishing vessels flying the flag of a third country which carry out fishing activities in the Community fishery zone should be amplified; whereas, in particular, such vessels operating in this zone should be subject to continuous satellite surveillance from the date on which the "Vessel Monitoring System" (VMS) applies to all Community fishing vessels of more than a stipulated length; whereas it is necessary to intensify the inspection and surveillance of landings by vessels flying the flag of a third country and particularly, following the steps taken by certain regional fisheries organisations to increase the effectiveness of measures for the conservation of fishery resources on the high seas, catches taken in the zones concerned;

Whereas, to enable the Commission to fulfil its role effectively, observation procedures should be introduced to allow inspectors acting for the Commission to verify the application of this Regulation;

Whereas, in order to strengthen and facilitate cooperation between all the authorities in the Community involved in the monitoring, inspection and surveillance of activities in the fisheries sector, a general framework should be set up under which all the authorities concerned can request mutual assistance and the exchange of relevant information, and specific monitoring programmes should be introduced, particularly in order to remedy problems caused by the over-exploitation of certain stocks;

Whereas application of the new provisions on transshipments and other joint fishing operations involving several fishing vessels should be postponed until the entry into force of the detailed implementing rules;

Whereas the public health and hygiene rules governing fishery products, both imported and produced in the Community, are set out in Directives 91/492/EEC and 91/493/EEC⁵;

Whereas Regulation (EEC) No 2847/93 should therefore be amended,

HAS ADOPTED THIS REGULATION:

⁵ OJ L 268, 24.09.1991.

Article 1

Regulation (EEC) No 2847/93 is amended as follows:

- 1) **The heading of Title I is replaced by the following:**

"TITLE I

Monitoring, inspection and surveillance"

- 2) **Article 2 is replaced by the following:**

"Article 2

1. In order to ensure compliance with all the rules in force, each Member State within its territory and within maritime waters subject to its sovereignty or jurisdiction shall monitor, inspect and maintain surveillance of all activities in the fisheries sector, particularly fishing itself, transshipment, landing, marketing, transport and storage of fish and the registration of landings and sales.
2. Each Member State shall monitor and, where applicable, inspect and maintain surveillance of, the activities of its vessels outside the Community fishery zone in order to ensure compliance with Community rules applicable in those waters."

- 3) **The last sentence of Article 3(2) is deleted.**

- 4) **Article 5 is replaced by the following:**

“Article 5

Detailed rules for the application of this Title shall be adopted as necessary, in accordance with the procedure laid down in Article 36, in particular as regards:

- a) the identification of officially designated inspectors and inspection vessels, aircraft and such other means of inspection as may be used by a Member State;
- b) the procedure for the inspection and surveillance of activities in the fisheries sector;
- c) the marking and identification of fishing vessels and their gear;
- d) the certification of the characteristics of fishing vessels which relate to fishing activities."

5) Article 6(2) is replaced by the following:

"2. Any amount greater than 50 kg of live-weight equivalent of a given species retained on board must be registered in the logbook."

6) Article 9(2) is replaced by the following:

"2. Where the first marketing of fishery products landed in a Member State is carried out in a manner different from that laid down in paragraph 1, the landed products shall not be collected until one of the following documents has been submitted to the competent authorities:

- a sales note, when the products are offered for sale at the place of landing,

- a copy of one of the documents provided for in Article 13, when the products are offered for sale at a location other than the place of landing; a sales note must be appended to such copies at the time of actual sale,

- a take-over declaration, when the products are not offered for sale or are intended for sale at a later date.

Buyers and holders of take-over declarations shall be responsible for the accuracy of the data to be contained in the sales note or take-over declaration.

This Article shall not apply to offers for sale of fishery products being transshipped within the meaning of Article 11."

7) The following indent is added to Article 9(3):

"- where possible, the reference number of the sales contract".

8) Article 9(4) is replaced by the following:

"4. Sales notes shall be submitted to the competent authorities responsible for monitoring the first marketing of fish in such a way that the following data can be included:

- the external identification and name of the fishing vessel which has landed the products concerned;
- the name of the vessel's owner or master,
- the port and date of landing;
- the reference to the landing declaration or logbook;
- where applicable, reference to one of the documents provided for in Article 13(1) and (4)(b)."

9) The following paragraphs are inserted after Article 9(4):

"4a. Where a sales note does not correspond to the invoice or to a document replacing it, as referred to in Article 22(3) of the sixth Council Directive 77/388/EEC⁶, the Member State shall adopt the necessary provisions to ensure that the information on the price excluding tax for deliveries of goods to the purchaser is identical to that indicated on the invoice."

"4b. Take-over declarations as referred to in paragraph 2, drawn up by owners of landed fishery products or their agents, shall contain at least the following information:

- the weight of each species, broken down by type of product presentation,

⁶ Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment; OJ L 145, 13.06.1977, p. 1.

- identification of the fishing vessel that has landed the products,
- identification of the master of the vessel,
- the port and date of landing,
- the places where the products are stored,
- reference to the landing declaration or logbook,
- where applicable, reference to one of the documents provided for in Article 13(1) and (4)(b)."

"4c. Where the fishery products landed are intended for sale at a later date, and where such products are to be placed on the market at a price provided for in a contract or at a fixed price set for a specified period, Member States shall carry out appropriate verifications once every year to check the accuracy of the information in the take-over declarations and sales notes referred to in paragraph 2."

10) Article 9(5) is replaced by the following:

"5. Sales notes and take-over declarations shall be transmitted to the competent authority or other bodies authorised by the Member State, in accordance with the law of the Member State in whose territory the operations have been carried out."

11) The following subparagraph is added to Article 9(6):

"Where the first marketing of fishery products does not take place in the Member State where the products have been landed, or where such products are intended for sale at a later date, the competent authorities responsible for monitoring the first marketing shall immediately transmit a copy of the sales note or take-over declaration to the authorities responsible for monitoring the landing of the products concerned."

12) Article 10 is deleted.

13) Article 11 is replaced by the following:

"Article 11

1. Transshipments and fishing operations involving joint action by several vessels and taking place in a port or in maritime waters subject to the sovereignty or jurisdiction of a Member State shall be authorised provided the vessels concerned submit to the procedures laid down in accordance with paragraph 2, particularly as regards:

- the definition of authorised places,
- inspection and surveillance procedures,
- the terms and conditions for registering and notifying the transshipment operation and the quantities transhipped.

2. Detailed rules for the application of this Article shall be adopted, taking account of the comments of the Member States concerned, in accordance with the procedure laid down in Article 36."

14) The following paragraph is inserted after Article 13(5):

"5a. Where fishery products that have been declared as sold in accordance with Article 9 are transported to a location other than the place of landing or import, transporters must be able to prove at all times that a sales transaction has taken place."

15) The following paragraph is added to Article 13:

"7a. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 36."

16) The following paragraph is added to Article 17:

"4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 36."

17) The following paragraph is added to Article 18:

"4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 36."

18) Article 19(3) is replaced by the following:

"3. Each Member State shall adopt the necessary measures to ensure that the information referred to in paragraph 1 is entered in the database as soon as possible.

The information on regulated resources within the meaning of Article 8 of Regulation (EEC) No 3760/92 as recorded in the logbook, the landing declaration, the sales note and the take-over certificate shall be entered in the database referred to in paragraph 2 within fifteen days of the date on which this information is transmitted to the competent authorities. If more than 85% of a quota has been fished, this period shall not exceed five working days."

19) Article 19(4) is replaced by the following:

"4. Each Member State shall assess the application of this Article once each year, particularly with regard to the reliability of the data. The results of this assessment shall be included in the Member State's report under Article 35."

20) Article 19(5) is replaced by the following:

"5. Member States shall adopt the necessary measures to facilitate the collection, validation and cross-referencing of data and to provide the Commission with remote access to the files in the database referred to in paragraph 1, at its specific request."

21) **The following sentence is added to the first subparagraph of Article 21(3):**

"The Commission shall notify the Member States of this date without delay."

22) **The last subparagraph of Article 21(3) is replaced by the following:**

"As from the date referred to in the first subparagraph, the flag Member State shall provisionally prohibit fishing for that stock or group of stocks by vessels flying its flag as well as the retention on board, transshipment and landing of fish taken after that date and shall decide on a date up to which transshipments and landings or final declarations of catches are permitted. The Commission shall be notified forthwith of this measure and shall then inform the other Member States."

23) **The following paragraph is inserted after Article 28(2):**

"2a. Where a minimum size has been fixed for a given species under Article 4 of Regulation (EEC) No 370/92, sellers or transporters of fish of that species smaller than the minimum size must be able to show the origin of the products at all times."

24) **The following Title is inserted after Article 28:**

"TITLE VIa

Monitoring the fishing activities of third-country vessels

Article 28a

For the purposes of this Title "third-country fishing vessels" means vessels flying the flag of, and registered in, a third country and operating in the Community fishing zone or carrying out landing or transshipment operations.

Article 28b

1. Third-country fishing vessels shall be authorised to catch, retain on board, transship or process fishery products in the Community fishing zone only provided they have been issued with a fishing licence and a special fishing permit in accordance with Article 9 of Regulation (EC) No 1627/94⁷.
2. In addition, third-country fishing vessels shall be permitted to carry out transshipments or fishing operations involving joint action by several vessels only if they fulfil the conditions set out in Article 11 of this Regulation.

Article 28c

All third-country fishing vessels operating in the Community fishing zone shall be subject to the following obligations:

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Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits; OJ L 171, 6.7.1994, p. 7.

- to record, in a logbook, the information referred to in Article 6 of this Regulation,
- from 1 January 2000 at the latest, to be equipped with a VMS position monitoring system approved by the Commission,
- until the VMS system is introduced, to comply with a system for reporting movements,
- to comply with a system for reporting catches retained on board,
- to comply with the instructions of the authorities responsible for monitoring, particularly as regards the inspections prior to leaving the Community fishing zone,
- to comply with the rules on the marking and identification of fishing vessels and their gear.

Article 28d

The Commission shall determine the date from which catches of a stock or group of stocks subject to quota taken by third-country fishing vessels shall be deemed to have exhausted the quota. The Commission shall notify the third country and the Member States concerned of this date without delay.

As from this date, fishing for that stock or group of stocks by such vessels as well as the retention on board, the transshipment and the landing of fish taken after that date shall be provisionally prohibited. The Commission shall also determine the date up to which transshipments and landings or final catch declarations are permitted.

Article 28e

1. Masters of third-country fishing vessels must notify the competent authorities of the Member State whose ports or landing facilities they wish to use of their time of arrival at the port of landing, the catches retained on board, indicating the zone or zones where the catch was made and, where applicable, the Community fishing zone or other zone under the jurisdiction or sovereignty of a third country, at least 72 hours before the estimated time of arrival at the port.

Landing operations may not commence until authorised by the competent authorities of that Member State.

2. Except in cases of *force majeure* or where a vessel is in distress, third-country fishing vessels may put in only at the ports designated by the Member State whose ports or landing facilities they wish to use.
3. The Commission, in accordance with the procedure laid down in Article 36, may grant an exemption for certain categories of third-country fishing vessels from the obligation stipulated in paragraph 1 for a limited and renewable period, or make provision for another notification period taking into account, inter alia, the distance between the fishing grounds, landing places and ports where the vessels in question are registered or listed.
4. Paragraphs 1 and 2 shall apply without prejudice to special provisions in fisheries agreements concluded between the Community and various third countries.

Article 28f

Masters of third-country fishing vessels or their agents shall submit to the authorities of the Member State whose ports or landing facilities they wish to use a declaration indicating the quantity of fishery products landed and the date and place of each catch. Masters or their agents shall be responsible for the accuracy of such declarations.

Each Member State shall forward to the Commission, at its request, information on landings by third-country fishing vessels.

Article 28g

1. Where the master of a third-country fishing vessel declares that catches have been taken on the high seas, the competent authorities shall authorise landing only after having inspected the fishing vessel.
2. The competent authorities shall authorise landing provided masters of the third-country fishing vessel or their agents can prove to their satisfaction that:
 - the species retained on board have been caught outside the regulatory areas of any competent international organisations of which the Community is a member,
 - the species retained on board have been caught in compliance with the conservation and management measures adopted by the competent regional organisation of which the Community is a member.

Article 28h

Detailed rules for the application of this Title, including the lists of designated ports, shall be adopted in accordance with the procedure laid down in Article 36 in concert with the Member States concerned."

25) The following paragraph is inserted after Article 29(3):

"3a. Community inspectors may, in the context of verification without prior notice, conduct observations on the implementation of this Regulation.

During their observation visits, Community inspectors shall have access to the relevant files and documents and to the public premises and places, vessels and private premises, land and means of transport where the activities covered by this Regulation take place, under the same conditions as those applying to national inspectors, in order to collect data (not containing named references) necessary for the accomplishment of their task.

Following such verifications without prior notice, the Commission shall forward a report on the observations made to the Member State concerned without delay."

26) The second subparagraph of Article 30(2) is replaced by the following:

"The Member States concerned shall inform the Commission of the results of the inquiry and forward a copy of the report drawn up not more than three months after the Commission's request."

- 27) The following paragraph is inserted after Article 31(2):

"2a. In accordance with the procedure laid down in Article 43 of the Treaty, the Council shall draw up a list of infringements of the Community rules referred to in Article 1 which are considered to be serious, and shall adopt appropriate follow-up action."

- 28) The following Title heading is inserted after Article 33:

"TITLE VIIIa

Cooperation among the authorities responsible for monitoring in the Member States and with the Commission"

- 29) Article 34 is replaced by the following Articles:

"Article 34

The terms and conditions on which the competent authorities responsible for monitoring the application of this Regulation in the Member States shall collaborate among themselves and with the Commission in order to ensure compliance with the rules of the common fisheries policy shall be as set out below.

Article 34a

1. The Member States shall provide each other with the mutual assistance needed to carry out the checks provided for in this Title.

2. Where an inspection or surveillance operation by the competent authorities of a Member State reveal that Community fishing vessels or vessels flying the flag of a third country and registered in a third country have carried out the fishing activities referred to in Article 2 in a way likely to infringe the Community rules, the Member State in question shall immediately notify all relevant information, as necessary, to the flag Member State of the vessel or vessels concerned, the other Member States concerned and the Commission. The other Member States concerned are the Member States in whose territory or waters the activities in question are being or are likely to be carried out.

The Member State in question may request the other Member States concerned to carry out special checks, giving specific reasons for their request.

The Member States shall keep each other informed, and shall inform the Commission, of the action they take in response to such requests, including, where applicable, the results of the checks and any proceedings relating to infringements.

3. The Member States shall inform each other of the national measures taken to that end, particularly those taken under Article 9(2) of Regulation (EEC) No 3760/92.
4. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 36.

Article 34b

The Commission may arrange for its inspectors visiting a Member State to be accompanied by one or more fisheries inspectors from another Member State as observers.

To that end, Member States shall draw up a list of national fisheries inspectors whom the Commission might invite to be present at such inspections.

The Commission shall place this list at the disposal of all the Member States.

Article 34c

1. The Commission shall determine which fisheries shall be subject to specific monitoring programmes, which may not last longer than two years, and the conditions governing such programmes, in accordance with the procedure laid down in Article 36 and in concert with the Member States concerned.
2. These programmes shall state their objectives, the human and material resources required, the periods and zones where these are to be deployed, the expected results of the measures included in the specific monitoring programme referred to in paragraph 1 and all the conditions required to ensure that the inspections are as effective and economical as possible.
3. The Member States shall adopt the necessary measures to facilitate implementation of the specific monitoring programmes, particularly as regards the assistance required by all the competent authorities concerned."

30) Article 35 is replaced by the following:

Article 35

1. Not later than 1 March each year, the Member States shall transmit to the Commission a report on the application of this Regulation during the previous calendar year.

2. On the basis of the reports submitted by the Member States and its own observations, the Commission shall draw up an assessment report every three years. It shall publish this report along with the Member States' replies and, where appropriate, measures and proposals to mitigate the shortcomings discovered.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 36, particularly regarding:

- the technical and human resources allocated specifically to fisheries monitoring,
- the laws, regulations and administrative provisions that the Member States adopt to prevent and prosecute irregularities,
- the results of inspections or checks carried out pursuant to this Regulation, including the number and type of infringements discovered and the action taken.

Article 2

Article 5 of Council Regulation (EEC) No 2241/87 is hereby repealed.

Article 3

This Regulation shall enter into force on 1 January 1999.

However, Articles 11 and 28b(2) shall apply from the date of entry into force of the detailed implementing rules referred to in Article 11(2).

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the Council

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