



COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(96) 272 final

REPORT FROM THE COMMISSION TO THE COUNCIL

Results of the application of Council Regulation (EC) No 1093/94 setting the terms under which fishing vessels of a third country may land directly and market their catches at Community ports.

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Article 8 of Council Regulation (EC) No 1093/94 of 6 May 1994 setting the terms under which fishing vessels of a third country may land directly and market their catches at Community ports¹ lays down that

"Before 1 July 1996, the Commission shall submit to the Council a report on the results of the application of this Regulation, accompanied, if need be, by appropriate proposals."

This report has been drawn up in response to this instruction, on the basis of Member States' replies to a Commission questionnaire on the application of the various provisions of the Regulation from its entry into force up to 31 December 1995.

Eight Member States replied to the questionnaire, four of them reporting direct landings. The figures sent to the Commission with Member States' replies are contained in the Annex.

Before actually examining the results of the application of Regulation (EC) No 1093/94, the Commission considers it would be useful to outline the background and the objectives which led to the adoption of the Regulation and thus place it in its international legal context.

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¹ OJ No L 121, 12.5.1994, p. 3.

I. The background to Regulation (EC) No 1093/94

Regulation (EC) No 1093/94 was adopted against the background of a major crisis on the Community market in fishery products, to prevent certain practices liable to disrupt a vulnerable market, in the absence of international legislation on direct landings.

A. Market situation and the objectives of the Regulation

The crisis situation at the beginning of 1993 on the Community market in fishery products, affecting the main white fish species in particular, was diagnosed and analysed in depth by the Commission² and also by the Member States and trade circles. It forced prices down on a market which was very sensitive to various cyclical factors.

In such a context, it is evident that direct landings by vessels of non-member countries, in the absence of appropriate legislation, present a serious risk that new disturbances will be triggered by the introduction to the market of very low-priced fish competing directly with Community production on the fresh fish market and, above all, threaten to undermine market management measures taken by producers' organizations, with the support of Community or national budgets.

Direct landings involve fish being imported by a fishing vessels which is not only the means of transport but also the means by which the fish was caught. Such a practice, on the one hand, avoids all controls by the authorities of the country of origin of the products and, on the other hand, saves on transport, inspection, packing and even fiscal and parafiscal costs as compared with other means of transport (whether by sea, air or land). Direct landings are therefore liable to lead to situations of unfair competition in relation to Community production.

Regulation (EC) No 1093/94 was thus adopted by the Council, acting on a proposal from the Commission, to authorize the principle of direct landings subject to certain requirements being met and under conditions which were no less stringent than those applying to Community production.

These conditions relate to the following:

- drawing up a list of authorized ports which have facilities for carrying out the requisite health checks, whereas previously there were no restrictions except national ones on access to ports of fishing vessels of non-member countries (Article 3);
- the submission to the competent authorities of a statement by the master of the vessel concerning the origin and quantities of products (Article 4);

² See communication on the crisis in the Community's fishing industry (COM(94) 335 final, 19.7.1994).

- the obligation, in the case of disposal of fresh fish, to comply with any rules decided on and implemented in the area of activity of a producers' organization (Article 5).

These rules can be regarded as quite liberal compared with those in force in some countries.

B. Situation with regard to direct landings in some other countries

On a general note, it should be mentioned that the United Nations Convention on the Law of the Sea expressly recognizes the right of coastal states to regulate unilaterally conditions of access to their inshore waters and port facilities; and no distinction is made between fishing vessels as the means of transport of their own catches and other cargo vessels used for commercial purposes.

The following are a few examples of the legislation on direct landings in force in some countries:

- USA: ban
- Australia: ban, except with ministerial authorization
- Canada: authorization on a case by case basis for vessels flying the flag of countries with which Canada has good fisheries relations
- Chile: health certificate required from the competent authority in the country of origin for any goods, even those in transit, entering Chile, regardless of the access route.

In such a context the legislation adopted by the Community does not appear to be open to dispute and has indeed not been disputed, in particular from the point of view of the Community's international commitments.

C. Compatibility of Regulation (EC) No 1093/94 with the Community's international commitments

Regulation (EC) No 1093/94 does not disregard the rules in force in connection with the WTO, nor does it apply to vessels flying the flag of countries or groups of countries with which the Community has concluded an agreement dealing expressly with direct landings, which is the case only for the Agreement on the European Economic Area.

- WTO

Regulation (EC) No 1093/94 does not impose discriminatory conditions on vessels of non-Community countries making direct landings as compared with Community production. On the contrary, its purpose is to subject such vessels to equivalent conditions to those which apply to Community production with regard to the landing and marketing of fishery products.

The compatibility of Regulation (EC) No 1093/94 with the 1994 GATT rules was not called into question when the WTO was established on 1 January 1995.

- **European Economic Area (EEA)**

Regulation (EC) No 1093/94 is not applicable to vessels flying the flags of countries which are signatories of the EEA Agreement since Article 5 of Protocol 9 to the Agreement expressly regulates the question of access to ports by fishing vessels. The Regulation does, however, apply to all other countries.

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II. Results of the application of Regulation (EC) No 1093/94

It is difficult to speak of "results" in the strict sense of the application of Regulation (EC) No 1093/94 since the measures in question are essentially of a preventive nature, so no quantifiable effect can be expected.

The Regulation therefore needs to be looked at rather from the angle of its general impact and any difficulties of application.

The three main provisions of the Regulation are dealt with separately below, followed by some general points.

A. Organization of health checks (Article 3)

The list of authorized ports sent in to the Commission by each of the Member States was published in the C series of the Official Journal on 28 May 1994, followed by the Finnish and Swedish lists on 29 December 1994.

None of the Member States reported any difficulties in this connection.

It emerged from the actual health checks carried out that the standards in force were generally met during the reference period; rejections for non-compliance were the exception (one case in Denmark and one in France, both involving small quantities).

B. Landing statement (Article 4)

No particular problems with this were reported; some Member States underlined the advantage of this procedure, without which no checks or action on infringement would be possible.

One Member State expressed the view that the time limit for prior notification (72 hours) sometimes seemed excessive, but this rule derives from Regulation (EEC) No 2874/93 establishing a control system and does not therefore relate specifically to direct landings by fishing vessels of non-Community countries.

C. Compliance with marketing rules (Article 5)

Only those quantities intended for direct marketing required to meet certain marketing requirements.

In actual fact these quantities are marginal, except in Spain, since most direct landings involve fish intended for processing and are not therefore covered by this provision;

No Member State reported difficulties in implementing this provision.

D. Quantities involved

The table in the Annex shows the quantities reported by five Member States for the years 1994 and 1995. The figures are therefore incomplete.

The quantities concerned are mainly concentrated in two Member States - Denmark and Spain - plus some in Germany and France.

Almost all the direct landings in the northern ports, including France, are intended for the processing industry and involve large tonnages of a small number of species.

As regards Spain, the majority of direct landings are in the Canary Islands and involve a large variety of fresh and frozen products, mainly for direct marketing.

Between 1994 and 1995 there was a marked decrease in the tonnage landed in Germany, Denmark and France and an increase in the case of Spain.

It can also be said that in all cases the number of landings decreased substantially, while the average quantity per landing increased markedly. It should be pointed out that the figures relate to only two years and cannot therefore be regarded as very significant.

E. General

Most of the Member States which replied to the Commission questionnaire expressed satisfaction with the existence and implementation of Regulation (EC) No 1093/94. There were no suggestions for amendments or improvements. No difficulties of application were mentioned.

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CONCLUSION

Of the eight Member States which replied to the Commission questionnaire, two said they were still opposed to the principle of the Regulation, four said they were pleased with it, and two made no particular comment.

Generally speaking, having regard to the small amount of information supplied by the Member States, the Commission finds it difficult to make an overall assessment of the implementation of Regulation (EC) No 1093/94. Several Member States failed to reply at all to the Commission and those that did supply information made no mention of how often or what kinds of checks were carried out to implement the Regulation.

On this point, therefore, the Commission would refer to the comments it makes in the parallel report to the Council on the monitoring of fishing vessels of other countries operating in the Community fishing area, which it undertook to produce at the Council meeting in December.

It can state the following, however:

- The measures in question are generally perceived as having a positive impact.
- No particular disadvantages have come to light as regards administration or market supply and operation.
- No action has been taken by a non-Community country, nor have any comments been received since the measure entered into force.

The Commission would also point out that one of the main attributes of Regulation (EC) No 1093/94 is that it is a preventive measure, and if it did not exist, the market would probably be adversely affected.

Lastly, the Commission would point out that it has always taken the view that the question of direct landings ought to be dealt with on a multilateral international basis and that in that connection it is important to have an internal legal instrument serving as a reference point for future international negotiations, to show the role the Community is playing in ensuring responsible fishing without undermining the principle of free trade. It is symptomatic of the situation that some states, particularly coastal states, wish to open the debate in some regional marine resource management organizations on the possibility of prohibiting landings by fishing vessels of non-contracting parties not observing the management and conservation rules laid down by those organizations. This approach needs to be addressed in the context of the code of conduct on responsible fishing and also the United Nations Agreement on straddling stocks and highly migratory species. The Commission will present guidelines to the Council on this matter at a later date.

In the light of the foregoing, the Commission takes the view that there are no grounds for amending Regulation (EC) No 1093/94 by either restricting or expanding its scope. It will not therefore be putting any such proposal to the Council but rather recommends maintaining the status quo.

Annex: Quantity (tonnes) and number of vessels involved in direct landings (figures for 1995 provisional)

	Germany		Denmark		Spain		France		Greece		Total	
	Q	N	Q	N	Q	N	Q	N	Q	N	Q	N
1994	1928	286	48157	5889	43449	623	9892	11	} 30'	} 20'	103426	6809
1995	536	56	25642	1818	67854	428	4733	8			98795	2310

1 for the two years.

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