

Initial Appraisal of a European Commission Impact Assessment

Revision of the Fisheries Control System

Impact assessment (SWD(2018) 280, SWD(2018) 279 (summary)) accompanying a Commission proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control (COM(2018)368)

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned [proposal](#), submitted on 30 May 2018 and referred to Parliament's Committee on Fisheries (PECH).

The current fisheries control system is made up of four pillars: the Control Regulation,¹ the IUU Regulation,² the SMEF Regulation³ and the EFCA Regulation.⁴ Apart from these four main pieces of legislation, specific control provisions are found in other legislative acts such as the Mediterranean Regulation⁵ and the Baltic Regulation.⁶ The fisheries control system supports the conservation measures of the common fisheries policy (CFP) in order 'to ensure that rules are properly followed and enforced and to promote a culture of compliance across the EU' (IA, p. 2). The fisheries control system also supports the common organisation of the market (CMO),⁷ which establishes a framework for the management of the market in fishery and aquaculture products. It is also relevant within the framework of the European Maritime and Fisheries Fund (EMFF),⁸ which is the main supporting financial instrument to the CFP.

In a [resolution](#) of 2016,⁹ the European Parliament recognised 'the significant improvement in the control regime brought about by the current Control Regulation, in combination with the IUU Fishing Regulation'. It nevertheless noted a lack of uniformity in the implementation of the control system and expressed its support for 'simplification and improvement of Union legislation' and a reduction in administrative burden, in particular through a 'limited and targeted revision' of the Control Regulation.

In a REFIT [evaluation](#) of the impact of the Control Regulation¹⁰ the Commission affirmed that 'while it is indisputable that the Control Regulation contributed to improve the fisheries control system and to step up compliance with the CFP, the current legislative framework is not entirely fit for purpose'. In particular it noted that the fisheries control system needs to be adapted to the new CFP as reformed in 2013,¹¹ to have its provisions clarified to reduce divergent implementation, and to be rendered more effective and efficient. The Commission included the review of the fisheries control system as one of the initiatives under its work programme for 2018.¹²

An audit [report](#) by the European Court of Auditors¹³ stated that although the 2009 Control Regulation brought about improvements in the fisheries control system, it found that 'due to significant weaknesses in most audited areas, the EU does not yet have a sufficiently effective system for fisheries controls in place to support the success of the CFP'. It also found that 'Member States had not yet fully implemented the EU's fisheries Control Regulation, and certain provisions of the regulation would need modification to enable Member States to effectively control fisheries activities'.

Problem definition

The IA identifies two main problems, highlighting an ageing system no longer fitting the prevailing legal and practical situation and which, as a result, lacks effectiveness and efficiency. The identified problems

are (i) a lack of coherence of the current fisheries control system with the CFP as reformed in 2013, and (ii) a system which is outdated and does not effectively address the constantly evolving fishing practices and techniques, does not take advantage of modern control technologies and data exchange systems, and does not reflect relevant new EU policies such as ‘the plastic strategy, the digital single market strategy and international ocean governance’ (IA, p. 9).

The IA explores the drivers of the problem and identifies consequences:

Drivers	Consequences
Lack of measures to control new provisions of the reformed CFP and lack of synergies with other policies	Landing obligation not enforced
	Fishing capacity ceilings possibly exceeded
	Marine Protected Areas not properly monitored and fishing activities therein not effectively controlled
	Inefficient use of EFCA’s resources
Complexity of the legislative framework and ambiguity of legal provisions	Lack of certainty and predictability for operators regarding the legal consequences of their actions
	Uneven implementation across Member States
	Unnecessary administrative burden
Inadequate provisions for fisheries data	Ineffective management of fishery resources
	Flaws in scientific advice
	Compromised CFP objective for sustainable fisheries
Enforcement rules not deterrent enough	Low culture of compliance
	Unequal treatment of operators
	Negative impact on fishery resources

Source: IA (adapted by author)

The identification of the problems and their drivers and consequences appears to be based mainly on legal analysis and to some extent on stakeholder feedback and analysis of data. In this respect the IA draws notably from the results of the REFIT evaluation and appears to make a clear analysis, exploring the causal links between problems, drivers and consequences.

Objectives of the initiative

The **general** objective of the Commission proposal is to make the fisheries control system more effective and efficient and ensure full compliance with the CFP as reformed. The **specific** objectives are listed in the table below.

As recommended in the Commission’s better regulation [guidelines](#) and in [tool 16](#) of its better regulation 'toolbox' the IA sets **operational** objectives after having identified the preferred option and in relation to monitoring and evaluation. For each of the specific objectives the IA sets one or more operational objectives and the corresponding monitoring indicators, indicating also the expected trends in the medium and long term as criteria for measuring the success of the initiative.

Specific objectives	Operational objectives	Monitoring indicators	Expected trends of indicators	
			3 - 5 years	5 - 10 years
Removal of obstacles that hinder the development of a culture of compliance and the equitable treatment of operators within and across Member States	Sanctions are deterrent enough in all Member States	Number of infringements and serious infringements per number of inspections and number of vessels (yearly)	↑	↓
		Average fine by type of infringement (yearly)	↑	↔
		Average time for the allocation of points/assignment of penalties (yearly)	↓	↔
Simplification of the legislative framework and reduction of the administrative burden	Structures are in place for easy data exchange	Number of interoperable databases/systems (yearly)	↑	↑
	Reduction in the number of publications in the C series of the Official Journal of the European Union	Number of publications in the C series of the Official Journal linked to the Control Regulation (yearly)	↓	↔
Improvement in the availability, reliability and completeness of fisheries data and information, in particular of catch data, which are key to monitor and deliver on the CFP objectives and allow exchange and sharing of information	All vessels report their catches (electronically)	Catch data by fish stock by sea-basin (monthly)	↑	↔
		Number of stocks with sufficient fisheries data to support scientific advice in the Mediterranean	↑	↑
Bridging of the gaps with the CFP and with other EU policies	The landing obligation is effectively enforced	Number of infringements prosecuted on breaches to the landing obligation (yearly)	↑	↔/↓
	Member States can effectively control marine protected areas	Number of infringements detected for fishing activities in marine protected areas (yearly)	↑	↔/↓

Source: IA (adapted by author)

The objectives seem to correspond directly to the problems identified and their drivers and consequences, and appear to be specific, measurable, achievable, relevant and time-bound, as recommended in tool 16 of the better regulation 'toolbox'.

Range of options considered

The IA considered five policy options; of these, it discarded two and retained three for further analysis and comparison. The retained policy options are the following:

- Baseline option involving no policy change but full enforcement of the current rules. The IA explains that the REFIT evaluation concluded that although the main provisions of the Control Regulation are implemented, full compliance has not yet been achieved and improvements could be made through reinforced implementation and enforcement by Member States.
- Option 1 involving targeted amendments of the Control Regulation covering four thematic areas:
 - enforcement including sanctions, the point system and follow-up of infringements;
 - data availability, quality and sharing in particular with regard to reporting and tracking for vessels below 12 metres, data on recreational fisheries, weighing procedures and data, monitoring of fishing capacity, and data management and sharing at EU level;
 - control of the landing obligation; and
 - synergies with other policies.

The amendments aim to clarify provisions that are currently interpreted and implemented in divergent manners by the different Member States, thus hindering the achievement of a level playing field among EU fishermen. They are meant to simplify the legislative framework, reduce the administrative burden, digitalise control data, set the conditions for integrated EU information systems and databases, and align the regulation with the Lisbon Treaty.

- Option 2 involving targeted amendments of the fisheries control system in general and not limited to the Control Regulation. This option builds on option 1 and, in addition to all the actions proposed under that option, proposes:
 - amendment of the EFCA Regulation;
 - amendment of the IUU Regulation as regards enforcement and modernisation of the catch certificate system for imported fish products;
 - other amendments to relevant provisions in other legislative acts, such as the Mediterranean Regulation and the Baltic Regulation.

The **preferred option** is option 2.

The two discarded options involved a full revision of the fisheries control system and the repeal of the Control Regulation. These were discarded as both entailed a radical change from the current policy that was considered not desirable as it would prevent a 'return on the investments made so far' and thwart 'the achievement of the anticipated benefits on the long term' (IA, p. 29).

The description of the options is clear and is accompanied by a list of the core assumptions underpinning them, helping to show how the options are capable of achieving the objectives set and address the problems identified. The IA also identifies a number of technical sub-options. Those considered capable of achieving the objectives with minimal administrative burden and which enjoyed most support of stakeholders were retained and are described under Annex 5. Annex 6 describes the discarded sub-options and the reason they were not retained.

Scope of the impact assessment

For the three retained options the IA assesses the environmental, economic and social impacts and the administrative burden the options would impose. The impacts are then compared with regard to:

- their effectiveness in achieving the general and specific objectives set out in the IA;
- their efficiency, i.e. the cost effectiveness in delivering the objectives;

- their coherence (i) with the CFP, (ii) with relevant horizontal legislation such as the IUU Regulation, the EFCA Regulation, the CMO Regulation and EU food law,¹⁴ and (iii) with overarching EU policies such as the EU's body of environmental legislation, the digital single market strategy,¹⁵ the plastics strategy,¹⁶ the ocean governance agenda¹⁷ and the strategic partnership with the EU's outermost regions;¹⁸
- their acceptability in terms of stakeholders' support and proportionality; and
- how they compare with the recommendations of EU institutions and bodies, viz. the European Parliament, the Council, the European Commission REFIT platform, the European Court of Auditors and the EFCA Administrative Board.

To a large extent the analysis is a qualitative one, with quantitative inputs where this was possible. Thus, for example, case studies provide quantitative estimates on the economic impacts of improved control of fisheries and the impact of actions to alleviate the administrative burden are monetised. For the purposes of the comparison of the options, the IA is clear and explicit in stating that it was not possible to quantify the impacts of the options and hence to provide a 'direct quantitative comparison at the aggregated policy level'. Instead the impacts are 'scored against a range of quantitative and qualitative indicators, to provide a quantitative basis for the comparison of the options'.

Subsidiarity / proportionality

In its Section 3 'Why should the EU act?', the IA states that 'the CFP and its control is an area of exclusive competence pursuant to Article 3(d) of the Treaty and therefore the subsidiarity principle does not apply'.

Proportionality is one of the criteria the IA uses for the comparison of options. The IA considers that 'both Options 1 and 2 may be considered proportional in terms of the specific actions they include', and that 'they also appear proportional in terms of addressing aspects that the current system has not proven to be able to achieve to date.'

Budgetary or public finance implications

With regard to implications for the EU budget, the explanatory memorandum accompanying the proposal states that 'there is no impact on commitment appropriations since no modification is proposed to the maximum amounts of European Structural and Investment Funds financing provided for in the operational programmes for the programming period 2014-2020'.

According to the IA, the preferred option would entail an additional administrative cost of €5.5 million for the EU and a cost saving of €106.6 million for Member State administrations over the first five years (IA, p. 38).

SME test / Competitiveness

The IA considers impacts on SMEs only to the extent of acknowledging that stakeholders that would principally feel the impacts of the options would be 'businesses directly concerned by the EU control policy (vessel owners, and crew, processors, transporters - typically SMEs' (IA, Annex 4: Analytical methods), and that digitisation and new ICT applications under options 1 and 2 would 'boost innovation, providing new avenues for job creation and creating new opportunities for small and medium-sized enterprises (SMEs)' (IA, p. 33). It does not appear that the four steps constituting the SME test according to [tool 22](#) of the Commission's better regulation 'toolbox' have been conducted in this case.

Insofar as competitiveness is concerned the IA claims, when discussing the preferred option, that, 'taking into account all the evidences collected and analysed through the Impact Assessment process, Option 2 would best [...] increase competitiveness of the European industry' (IA, p. 43).

Simplification and other regulatory implications

The IA attaches considerable importance to simplification and reduction of the administrative burden. Indeed, simplification and reduction of the administrative burden is one of the specific objectives identified by the IA, and the impact on administrative burden is one of the impacts systematically analysed for each of the retained options and against which the options are compared.

Bridging the gap between the fisheries control system and other EU policies is another of the specific objectives identified and is also one of the criteria for the comparison of the options.

Quality of data, research and analysis

For its data, research and analysis the IA relies to a significant extent on a [study](#) prepared for the Commission by external experts ('the external study').¹⁹ The assessments and assumptions appear to be reasonable and to be based on sound research and analysis. Also, uncertainties are explicitly recognised and the IA is transparent about instances where data is not available. The external study (and the IA) uses multi-criteria analysis to compare the options. It explains that this was considered to be the most appropriate method as the IA 'needs to be reconciled with specific policy objectives' and not just monetary costs and benefits, and also because the impacts are 'diverse, quantified in different units, and contain a mix of quantitative and qualitative impacts' (IA, p. 71). For the assessment of the baseline the external study conducted a number of case studies comparing fisheries targeting the same species with and without specific and reinforced control actions.

In its Annex 1 the IA dedicates a section to details about the different sources used to collect data, including in particular numerous studies conducted for the European Parliament.

Stakeholder consultation

Annex 8 to the IA identifies and describes the different stakeholders affected by the initiative and Annex 3 gives a summary of 'the practical implications and costs of the initiative for the directly affected stakeholders, together with the benefits associated with it (for direct and indirectly affected stakeholders)'.

In its Annex 2 the IA gives an overview of the consultation objectives, the consultation process undertaken and the main conclusions from the stakeholders' consultation. An open public consultation was conducted *only* with regard to the evaluation of the Fisheries Control Regulation and not in relation to the IA as is required in the better regulation guidelines. The possibility of a single open public consultation in relation to both the evaluation and the IA is envisaged in [tool 52](#) and [tool 53](#) of the better regulation 'toolbox' in the case of back-to-back (parallel) evaluations and impact assessments. It is doubtful, however, that this is the case in this instance, given the absence of any such indication in the IA and the time lapse between the evaluation and the IA. The open public [consultation](#) regarding the evaluation took place between 17 December 2015 and 13 March 2016, receiving a total of 462 contributions. 84 % of responses were from individuals, 8 % from businesses, 3 % from NGOs, 2 % from public authorities and 1 % from scientists, with the remaining 2 % from retailer organisations, consumer organisations and local or regional authorities. With regard to the nationality of the respondents, 68 % were from Ireland and 14 % from the UK, with 4 % or less coming from France, Spain, Germany, Italy, Belgium, Denmark, Portugal, the Netherlands, Sweden, Cyprus, Finland, Austria, Estonia, Latvia, Slovenia and Slovakia respectively. The open public consultation asked for feedback on the strengths and weaknesses of the current system and invited suggestions for the ways forward.

The open public consultation was complemented by other targeted consultation activities,²⁰ which were conducted in three phases. In the first phase the results of the REFIT evaluation were discussed and feedback gathered on the main issues to be tackled and suggestions on how best to face these challenges. In the second phase feedback was sought on a wide range of possible policy options and specific actions to tackle the problems, while in the third phase feedback was sought on the three retained policy options and certain specific actions. Taken together the stakeholder consultation activities appear to have 'a good mix of backward looking and forward looking questions that address

existing performance and the design of the new initiative', as recommended in tool 52 of the better regulation 'toolbox'.

Stakeholders views are reflected throughout the IA and were considered in the process of selection of the preferred option and discarding of options and sub-options. Furthermore, the acceptability of the options to stakeholders was one of the criteria for the comparison of the retained options.

Monitoring and evaluation

The IA details the methods envisaged for the monitoring and evaluation of the initiative. With regard to evaluation, the proposal generally relies on already existing provisions in the legislative acts that it seeks to amend.²¹ The monitoring indicators identified by the IA are listed in the table in the 'Objectives of the initiative' section above.

Commission Regulatory Scrutiny Board

The Commission's Regulatory Scrutiny Board (RSB) issued a positive [opinion](#) on the IA on 9 February 2018, with a recommendation to improve the report in particular by (i) better explaining the links between the fisheries control system and the CFP and other relevant policies, (ii) better presenting the problem definition and problem drivers, (iii) presenting the baseline scenario assuming full enforcement of existing policies, (iv) elaborating further on the environmental and social impacts of the options, (v) better reflecting stakeholder views, and (vi) clearly specifying operational criteria for success. The final version of the IA report seems to reflect the RSB recommendations and in its Annex 1 it describes how these recommendations were addressed.

Coherence between the Commission's legislative proposal and IA

The proposal appears to correspond to the preferred policy option indicated in the IA.

Conclusions

The IA presents a well-balanced, comprehensive and transparent analysis to identify the problems with the status quo, define the objectives of EU action, delineate policy options that can fulfil those objectives, assess the impacts of those options, and choose the best options to address the identified problems. This process seems to be based on sound data and research and a clear effort appears to have been made to deliver a persuasive impact assessment capable of supporting decision-making. Except with regard to the matter of the open public consultation, the IA appears to have generally followed the directions provided in the better regulation guidelines.

ENDNOTES

¹ 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. This regulation is the result of a reform that consolidated control provisions that were spread over 23 separate legislative acts.

² Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing. For more information on the IUU Regulation see I. Popescu, [Illegal, unreported and unregulated \(IUU\) fishing](#), EPRS, European Parliament, November 2017 and S. Chahri and I. Popescu, [Illegal, unreported and unregulated \(IUU\) fishing](#), infographic, EPRS, European Parliament, September 2018.

³ Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets.

⁴ Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency.

⁵ Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea.

⁶ Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks.

⁷ Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products.

⁸ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund.

⁹ Resolution of 25 October 2016 on how to make fisheries controls in Europe uniform, European Parliament.

¹⁰ Implementation and evaluation of Regulation (EC) 1224/2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy as required under Article 118, COM(2017) 192, European Commission, April 2017.

¹¹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy.

¹² Communication on the Commission work programme 2018 - An agenda for a more united, stronger and more democratic Europe, COM(2017) 650, European Commission, October 2017.

¹³ Special Report - EU fisheries controls: more efforts needed, European Court of Auditors, 2017.

¹⁴ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

¹⁵ Communication on a digital single market strategy for Europe, COM(2015) 192, European Commission, 2015.

¹⁶ Communication on a European strategy for plastics in a circular economy, COM(2018) 28, European Commission, January 2018.

¹⁷ Joint communication on international ocean governance: an agenda for the future of our oceans, JOIN(2016)49, European Commission, High Representative of the Union for Foreign Affairs and Security Policy, December 2016.

¹⁸ Communication on a stronger and renewed strategic partnership with the EU's outermost regions, COM(2017) 623, European Commission, October 2017.

¹⁹ Assessment of the impacts of the policy options proposed for the amendment of the fishery control system, European Commission, May 2018 (Poseidon Aquatic Resource Management, AND International, F&S, Coffey).

²⁰ IA, Annex 2: 'The consultations especially involved: public authorities (including national competent authorities, regional and local authorities), Advisory Councils, industry/fishermen, EU and national associations, NGOs, the European Fisheries Control Agency (EFCA) and its Administrative Board, the European Maritime Safety Agency (EMSA), FRONTEX (sea border control).'

²¹ The proposal seeks to replace Article 39 of the EFCA Regulation in order to clarify the reporting process.

This briefing, prepared for the Committee on Fisheries (PECH), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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