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POLICY DEPARTMENT
STRUCTURAL AND COHESION POLICIES **B**



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**RESEARCH FOR
PECH COMMITTEE -
SOCIAL AND ECONOMIC
IMPACT OF THE PENALTY
POINT SYSTEM**

STUDY

DIRECTORATE-GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

FISHERIES

**RESEARCH FOR PECH COMMITTEE -
SOCIAL AND ECONOMIC IMPACT OF THE
PENALTY POINT SYSTEM**

STUDY

This document was requested by the European Parliament's Committee on Fisheries.

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DIRECTORATE-GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

FISHERIES

**RESEARCH FOR PECH COMMITTEE -
SOCIAL AND ECONOMIC IMPACT OF THE
PENALTY POINT SYSTEM**

STUDY

Abstract

This research study focuses on the social and economic impact of the penalty point system for serious fisheries infringements. Overall this study has identified challenges in relation to the penalty point system and its implementation. Stakeholders highlight concerns relating lack of transparency, problems of accountability, and lack of participation. Further, this report flags concerns that different implementation of the system on the national level negatively impacts smaller vessels and those fishing species with tight quotas or higher risk of bycatch.

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LIST OF ABBREVIATIONS

AER	Annual Economic Report
CFP	Common Fisheries Policy
DFMR	Department of Fisheries and Marine Research
DG MARE	Directorate General for Maritime Affairs and Fisheries
DIRM	Directeur Interrégional de la Mer
EC	European Commission
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EFCA	European Fisheries Control Agency
EMFF	European Maritime and Fisheries Fund
EP	European Parliament
EU	European Union
EUR	Euro
EZ	Netherlands Ministry of Economic Affairs
FMC	Fisheries monitoring centre
GVA	Gross value added
IFPO	Irish Fish Producers' Organisation
IUU	Illegal, unreported and unregulated
JDP	Joint Deployment Plans
JIS	Joint Inspection Structure
MCS	Monitoring, control and surveillance
MMO	Marine Management Organisation
MS	Member State(s)

- MSY** Maximum sustainable yield
- NEAFC** North East Atlantic Fisheries Commission
- NVWA** Netherlands Food and Consumer Product Safety Authority
- PECH** European Parliament's Committee on Fisheries
- PPS** Penalty point system
- RFMO** Regional Fisheries Management Organisation
- SFPA** Sea Fisheries Protection Authority
- TAC** Total allowable catch
- TFEU** Treaty on the Functioning of the European Union
- UK** United Kingdom
- VIR** Department Uitvoering Visserijregelingen
- VMS** Vessel monitoring system

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EXECUTIVE SUMMARY

Objectives and methodology

The European Parliament's Committee on Fisheries commissioned Blomeyer & Sanz to conduct a research study on the social and economic impact of the penalty point system for serious fisheries infringements. The purpose of the research study is to assess the impact of the system on working conditions. The main research questions are:

- What is the socioeconomic impact of the penalty point system on different fleet segments?
- How accessible and transparent are the regulations and its implementation?

Data has been collected from August 2015 to the end of October 2015, through desk research, stakeholder interviews and surveys.

Background

The European Union (EU) has established the Common Fisheries Policy in order to manage the European fishing fleet and conserve fish stocks. The rules aim to manage common resources, provide equal access to EU waters and allow for fair competition. To enforce the common rules, the EU established a control system that: ensures that allowed quantities of fish are caught; collects relevant data to manage fishing opportunities; defines the role of EU Member States and the European Commission; ensures equal applications and harmonised sanctions; ensures that fish products are traceable from net to plate.

Diversity between the implementation of rules in the different Member States poses challenges to the EU, especially when ensuring equal application and harmonised sanctioning. Therefore, the EU has established a list of serious infringements. Member States are to include in their legislation effective, proportionate and dissuasive sanctions. As from 1 January 2012, EU Member States have to have a point system for serious infringements introduced which aims to: assess alleged infringements involving vessels registered under its flag; impose a pre-set number of penalty points on vessels involved in serious infringements; suspend a vessel's licence for a period of time when points have been accumulated over time.

Key findings

Fishery rules on the EU level affect many different stakeholders, from decision-making bodies on the national and EU level, to industry players, civil society and citizens in general. Deciding on the right approach for fisheries management is a continuous debate. The Common Fisheries Policy sets common principles but allows for flexibility on the different approaches Member States can adopt to manage fisheries. As a consequence, fisheries management involves a wide variety of tools (e.g. output/input control, spatial management, technical measures, self-regulations, international cooperation and control measures). There is no one-size-fits-all solution on how to deal with challenges in fisheries. In order to assess the effectiveness of the penalty point system, one should assess the functioning of the fisheries management system as a whole. In addition, the diversity of the fisheries industry, lack of complete economic data and lack of detailed data on sanctioning of infringements complicates measuring socioeconomic impact of the penalty point system.

Nevertheless, the introduction of the penalty point system has required Member States to adjust their legal framework and adopt an administrative structure in order to be able to implement the system. In addition, the EU regulations specified that the penalty point system should, apart from applying to fishing license holders, also be adopted for masters of vessels. This study finds that Member States struggle on different levels with the introduction and implementation of the system. Especially the adoption of the system for masters of vessels is posing challenges, including significant opposition from industry stakeholders.

This study finds that, overall, the industry stakeholders confirm the added value of a harmonised sanctioning system in the EU. However, stakeholders are concerned about general concepts in the penalty point system, such as the possibility to suspend a license permanently. This is perceived as disproportionate. Other elements that raise industry concerns relate to the internal working of the system, such as the possibility that discrepancies in implementation of the system between Member States can cause discrimination. A salient issue is that despite the fact that industry identifies these problems, this study finds that few industry stakeholders are interested in addressing this. Arguably there is a risk that, for industry players, advantages from weak implementation of the penalty point system on the EU level weighs up against the advantage of an equal level playing field in terms of enforcement.

Apart from anecdotal evidence and expectations on the impact of the penalty point system, no quantitative evidence was identified on its impact. The industry stakeholders surveyed and interviewed for this study note that the system has impact on their members. Segments of concern include small-scale vessels, family-owned vessels and those fishing with complex quotas. The Member States consulted for this study indicate that to-date no data is available or analysis has been done to measure the impact of the system. The main reason is the fact that the system has only recently been put in place. Civil society feedback also confirms the lack of information on its implementation. An important element according to them is that lack of access to data impedes assessing impact. Both economic data and data on the use of the penalty point system is missing. The European Commission points out that the system aims to create a level playing field and prevent recidivism. At this stage, the focus of the Commission's work is on ensuring that Member States have a legal and administrative framework in place. Currently, clear benchmarks are lacking for measuring impact of the system. The European Commission also notes that generally research focus is on the effect on larger vessels due to the coherence with Illegal, Unregulated and Unreported fishing regulations.

Recommendations

Overall challenges identified in relation to the penalty point system and its implementation relate to lack of transparency (e.g. on access to information at the national and EU level), problems of accountability (e.g. who is responsible for inspection and follow-up and how can this be enforced by the European Commission), and lack of participation (e.g. concerns from the industry on the system's working and integrity, but also from civil society on the complete lack of transparency which does not allow for public scrutiny). Therefore, first and foremost, it is recommended to integrate transparency, accountability and participation as key principles for the EU's control mechanisms and the penalty point system in particular.

In addition, this study highlights the following recommendations:

ISSUE	EU control regulations leave room for manoeuvrability when enforcing fisheries rules. The European Commission reports periodically on Member State implementation.
RECOMMENDATION	Ensure real time and transparent monitoring of implementation of enforcement by the Member States.
ISSUE	Serious infringements defined by EU rules relate to violations of different fisheries management tools such as spatial planning, technical measures, input and output control measures. Prevention of serious infringements relates to many different elements of fisheries management.
RECOMMENDATION	Ensure also harmonisation and/or better understanding of the use of management tools behind the detailed infringements in order to prevent serious infringements from happening and to enhance sanctioning.
ISSUE	A multitude of factors have been identified that contribute to good or bad economic performance of the fisheries sector.
RECOMMENDATION	Include the cost of serious fisheries infringements on the economy as a research focus when collecting and reporting on economic performance data from Member States.
ISSUE	Industry players confirm the added value of a harmonised sanctioning system in the EU. At the same time, the industry lacks willingness to address this issue with their respective authorities.
RECOMMENDATION	Include industry stakeholders in dialogue and engage them to strengthen equality in implementation of the penalty point system across the EU.
ISSUE	Risks have been identified that inspection authorities do not always have access to relevant data to effectively inspect foreign vessels. In addition, different approaches to output control, such as national rules on TAC swaps, poses problems to Member States when ensuring effective follow-up with flag states on detected infringements.
RECOMMENDATION	Ensure that all fisheries monitoring centres have real time data exchange on fisheries activities. Also ensure that Member States exchange information on the use of control measures and avoid abuse of flag state rules in order to avoid points to be assigned.
ISSUE	Despite the lack of hard data, some anecdotal evidence points to fleet segments that are particularly vulnerable to the point system, such as small-scale vessels, family-owned vessels, and vessels fishing certain species.
RECOMMENDATION	For the future, develop a clear methodology to assess the impact of the penalty point system on certain fleet segments. At this stage, make sure to prioritise and monitor those that are currently identified as vulnerable.

1. INTRODUCTION

This in-depth analysis has been prepared by Blomeyer & Sanz. The introduction briefly presents the objectives (1.1.), the methodology (1.2.), definitions and concepts used in the report (1.3.), and the structure (1.4.).

1.1. Research objectives

The purpose of this in-depth analysis on the penalty point system (PPS) for serious fisheries infringements is to assess impacts on working conditions, differentiating the observations according to the vessel size and fisheries.¹ The following points describe the main aspects of the study:

- The first aspect includes a description of the penalty point system;
- The second aspect includes an assessment of the implementation of the system;
- The third aspect includes recommendations.

The study adds value to the work of the European Parliament Committee on Fisheries (PECH) by providing decision-makers and the other stakeholders with information on challenges faced by key stakeholders in the implementation of the PPS, as well as observations on accessibility and transparency of the regulations.²

1.2. Methodology

This section outlines the methodology for the development of the present study by presenting the time frame (1.2.1), the structure of the research questions (1.2.2.) and finally an overview of the tools used for data collection (1.2.3.).

1.2.1. Time-frame

Research was undertaken from the beginning of August 2015 to the end of October 2015.

1.2.2. Structure of the questions

The study questions have been divided into three groups:

- Implementation of the PPS;
- Impact of the PPS;
- Findings and recommendations

Implementation of the PPS

The first study area covers a description of the PPS, its objectives and practical implications for the European Commission (EC), Member States (MS) and other stakeholders. The aim of the first study area is to understand the PPS, its rationale, and set the scene for understanding challenges in its implementation. The main study questions are:

- Against which background has the PPS been developed?
- What are the system's objectives?
- Who are the main stakeholders involved in the system?
- How does the system operate?
- Which challenges do stakeholders face in the implementation?

¹ Stated in the study's Terms of Reference.

² Ibid.

Impact of the PPS

The second study area provides an overview of the state-of-play of the system in the EU, measures taken to address challenges in the implementation of the system, and observations in relation to accessibility and transparency of the system. The main study questions are:

- What procedures are used at the national level to implement the system?
- What role does the European Commission play in the implementation of the system?
- How accessible and transparent are the regulations for stakeholders?

Findings and recommendations

The third study area provides recommendations based on good practices that address challenges facing implementation of the PPS. This aims to add value to the work of the PECH Committee by providing evidence-based and action-oriented recommendations for an EU-harmonised approach in the implementation of the PPS in order to sanction serious infringements.

1.2.3. European Parliament 2014 briefing note on infringement procedures

In 2014, the European Parliament PECH committee published a briefing note titled: The Common Fisheries Policy – Infringement Procedures and Imposed Sanctions Throughout the European Union (IP/B/PECH/IC/2013-135). This report will, apart from addressing new research questions, also aim to complement and update the findings from the 2014 briefing note.

1.2.4. Data collection and assessment tools

The data for this in-depth analysis has been collected through:

- Desk research - Data used for this report comprises legislation, official documents and secondary sources. A full overview can be found in the annex.
- Stakeholder interviews - Stakeholders were selected from the public and private sector, as well as academia and civil society, at national and EU level. For this in-depth analysis, the main stakeholders consulted come from the European Commission (DG MARE), national fisheries inspection authorities, scientific research institutes, the industry and non-governmental organisations.
- Survey - Two surveys were launched, one targeting national fisheries inspection authorities, and one targeting fisheries industry representatives from all Member States (MS). The interview and survey questions are included in the annexes.

1.3. Definitions and concepts used by the report

This section introduces some key definitions used by the report:

Table 1: definitions and concepts

Definitions and concepts	
Coastal State	This refers to the ' <i>State in the waters under the sovereignty or jurisdiction or in the ports of which an activity takes place</i> '. ³
Conservation and management measures	This refers to ' <i>measures to conserve and manage one or more species of living marine resources and that are adopted and in force in accordance with the relevant rules of international and/or Community law</i> '. ⁴
Control	This refers to monitoring and surveillance.
Enforcement	This refers to actions taken to ensure compliance with the rules of the CFP.
Executive authority	This refers to a part of the government with the authority and responsibility to impose sanctions.
Fishing activity	This refers to ' <i>searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fisheries products</i> '. ⁵
Fishing authorisation	This is issued in addition to the fishing licence and entitles a vessel to carry out specific fishing activities under specific conditions.
Fishing licence	This refers to ' <i>an official document conferring on its holder the right, as determined by national rules, to use a certain fishing capacity for the commercial exploitation of living aquatic resources</i> '. ⁶
Fishing opportunity	This refers to ' <i>a quantified legal entitlement to fish, expressed in terms of catches and/or fishing effort</i> '. ⁷
Fishing vessel	This refers to ' <i>any vessel of any size used or intended for use for the purposes of commercial exploitation of fishery resources, including support ships, fish processing vessels, vessels engaged in transshipment and carrier vessels equipped for the transportation of fishery products, except container vessels</i> '. ⁸
Flag State	This refers to the State under whose laws the fishing vessels is registered or licenced.
Inspection	This refers to any ' <i>check carried out by officials regarding compliance with the rules of the common fisheries policy and which is noted in an inspection report</i> '. ⁹
Landing	This refers to ' <i>the initial unloading of any quantity of fisheries products from on board a fishing vessel to land</i> '. ¹⁰
Surveillance	This refers to ' <i>the observation of fishing activities on the basis of sightings by inspection vessels or official aircrafts and technical detection and identification methods</i> '. ¹¹
Transshipment	This refers to the ' <i>unloading of all or any fishery products on board a fishing vessel to another fishing vessel</i> '. ¹²

³ EUR-LEX (n.d.). Council Regulation (EC) No 1224/2009 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1224> [Accessed on 10/10/2015]

1.4. Report structure

The report is organised in three main sections:

Table 2: report structure

Section	Chapters	
2. Description	2.1 Background CFP 2.2 Key CFP stakeholders 2.3 Control and enforcement 2.4 Infringements and sanctions 2.5 EU fleet economic performance	This section presents an overview of the PPS in the context of the CFP. It discusses the main objectives and workings of the system. Also it will introduce key players affected by the system.
3. Assessment	3.1 Implementation 3.2 Impact 3.3 Transparency 3.4 Country data	This section presents key challenges identified through data collection for this study. The implementation is assessed and the impact of the PPS system. This section is illustrated by examples and in-depth information from various EU MS.
4. Recommendation	4.1 Recommendations CFP, control and enforcement 4.2 Recommendations implementation PPS	This section presents an overview of recommendations on the working of the PPS. Also it will highlight some areas for more in-depth research.
Annex	Bibliography	This section presents an overview of the references used for this briefing note.

⁴ EUR-LEX (n.d.). Council Regulation (EC) No 1005/2008 [WWW]. Available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008R1005> [Accessed on 10/10/2015]

⁵ EUR-LEX (n.d.). Council Regulation (EC) No 1224/2009 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1224> [Accessed on 10/10/2015]

⁶ Ibid.

⁷ Ibid.

⁸ EUR-LEX (n.d.). Council Regulation (EC) No 1005/2008 [WWW]. Available from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008R1005> [Accessed on 10/10/2015]

⁹ EUR-LEX (n.d.). Council Regulation (EC) No 1224/2009 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1224> [Accessed on 10/10/2015]

¹⁰ EUR-LEX (n.d.). Council Regulation (EC) No 1224/2009 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1224> [Accessed on 10/10/2015]

¹¹ EUR-LEX (n.d.). Council Regulation (EC) No 1224/2009 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1224> [Accessed on 10/10/2015]

¹² EUR-LEX (n.d.). Council Regulation (EC) No 1224/2009 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1224> [Accessed on 10/10/2015]

2. DESCRIPTION

This section introduces the PPS within the wider framework of the Common Fisheries Policy (CFP) and its compliance framework. The descriptive part is meant to underpin the relevance of the system and at the same time present a coherent structure for a stand-alone report.¹³

2.1. Background CFP and key stakeholders

KEY FINDINGS

- Fisheries management involves a wide variety of tools (e.g. output/input control, spatial management, technical measures, self-regulations, international cooperation and control measures). There is no one-size-fits-all solution on how to deal with challenges in fisheries.
- The effectiveness of fisheries management tools depends on many different variables that are interrelated. The success of one tool depends on the functioning of the system as a whole.
- Fisheries management in Europe has been on the agenda since the start of EU integration. It has been a patchwork of measures over time building on contemporary challenges facing decision-makers, industry players and citizens.
- Fisheries rules on the EU level affect many different stakeholders from decision-making bodies. The CFP sets common principles but allows for flexibility on the different approaches Member States can adopt to manage fisheries. Deciding on the right approach for fisheries management is a continuous source of debate.

Articles 38-43 of the Treaty on the Functioning of the European Union (TFEU) provide the legal basis for the EU's Common Fisheries Policy.¹⁴ The CFP manages European fishing fleets and sets rules for conserving fish stocks. It aims to ensure environmentally, economically and socially sustainable fisheries through four policy areas: fisheries management; international policy; market and trade policy; and EU funding.¹⁵

In simple terms, the CFP aims to find a balance between fish stocks and the fishing fleet in order to avoid overcapacity and possible depletion of resources. This is done by setting limits on capacity and fishing effort, in combination with technical measures (so-called input controls) such as gear specifications, minimum sizes of fish and area/time closures. The most important tool at the EU's disposal is the limiting of total allowable catches (TAC) and dividing them between the Member States in the form of quotas (so-called output control).

¹³ Note that this study aims to complement a previous European Parliament study conducted in 2014 titled: The Common Fisheries Policy – Infingement Procedures and Imposed Sanctions Throughout the European Union (IP/B/PECH/IC/2013-135).

¹⁴ EUR-LEX (n.d.). TFEU [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT> [Accessed on 15/10/2015].

¹⁵ EUROPEAN COMMISSION (n.d.). The Common Fisheries Policy (CFP) [WWW]. Available from: http://ec.europa.eu/fisheries/cfp/index_en.htm [Accessed on 08/10/2015].

Fisheries have been on the agenda since the beginning of EU integration.¹⁶ It played an important role in 1972 during the EEC negotiations with Denmark, Ireland and the United Kingdom (UK). MS agreed at this stage to manage fisheries at the European level. In 1983, decisions were taken on conservation measures based on TACs and with the accession of Spain and Portugal in 1986, the EU fleet and catch potential increased significantly. This posed new challenges to the European Community with the need to address problems concerning fleet capacity and catch potential. As a result in 1992, the concept of fishing effort was introduced and measures were taken to regulate licensing. Despite increasing European effort, problems with depleting fish stocks remained and the MS were forced to take more measures. In 2002, the CFP was reformed and multi-annual recovery and management plans were introduced. Measures were taken to improve safety and working conditions for fishermen, improve product quality and promote the use of more selective fishing techniques. Vessels were asked to equip themselves with satellite vessel monitoring systems (VMS).¹⁷ An important aspect of the reform was the creation of the European Fisheries Control Agency (EFCA).¹⁸ In 2009, another reform was launched in order to address issues that remained unsolved in previous reforms, such as the problem of discards. A public consultation was launched, and finally in 2013 an agreement was reached on a new fisheries regime. This included a new CFP, common organisation of the fishery markets and a new European Maritime and Fisheries Fund (EMFF).¹⁹ The new reform introduced the concept of maximum sustainable yield (MSY) as the main target for fisheries. In addition, the reform initiated the development of measures that by 2019 should ensure full implementation of a new discard policy.

Fishery rules on the EU level affect many different stakeholders. It involves the industry and entire communities that economically depend on fisheries. It affects authorities that are required to legislate and implements rules. Ultimately, the CFP impacts all citizens that rely on fish as a healthy food source.

Key EU institutional players on fisheries are the European Commission (EC) and the Council.²⁰ The European Parliament (EP) has co-legislative powers in many area of fisheries legislation. Being a shared competence, Member States carry most weight in CFP decision-making as well as its implementation. Decisions on management of fisheries are either taken at the national or EU level depending on the management issues. For example, MS are responsible for ensuring compliance and sanctions in case of violations of the rules.

¹⁶ EUROPEAN PARLIAMENT (n.d.). The Common Fisheries Policy: origins and development [WWW]. Available from: http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.3.1.html [Accessed on 10/10/2015].

¹⁷ EUROPEAN COMMISSION (n.d.). Vessel monitoring system (VMS) [WWW]. Available from: http://ec.europa.eu/fisheries/cfp/control/technologies/vms/index_en.htm [Accessed on 06/10/2015].

¹⁸ EFCA (n.d.). European Fisheries Control Agency [WWW]. Available from: <http://efca.europa.eu/>

¹⁹ http://ec.europa.eu/fisheries/cfp/emff/index_en.htm [Accessed on 05/09/2015].

²⁰ For example, the Council is, on proposals by the EC, responsible for provisions concerning fixing and allocation of fishing opportunities.

Box 1: no one-size-fits-all approach to fisheries management**No one-size-fits-all approach to fisheries management**

Fisheries management has always been an important topic. Examples of fisheries management in Europe can be found all the way back to the 10th century, for example in Sicily for red coral. Often initiatives evolved out of conflict situations but were managed by small communities and covered geographically limited areas. Initiatives often were not translated into law and aimed at organising economic and social life rather than managing resources. But local management of fisheries was not sufficient and with the development of industrial fishing in the 20th century, fish stocks depleted in a rapid speed. As a consequence international measures were taken, as well as steps on the EU level.

Various management instruments were developed such as those focusing on output control (e.g. catch limitations), and those on input control (e.g. fleet policy, effort limitations). Also spatial management (e.g. closed areas), technical measures (e.g. allowable fishing gear), rights-based management (e.g. individual quotas, territorial rights), self-regulation, international cooperation initiatives (e.g. RFMOs), and fisheries control measures (e.g. vessel monitoring systems, electronic recording) are used to manage fisheries. The geographical spread, many stakeholders involved and vast amount of species makes it is clear that there is no one-size-fits-all approach to deal with global challenges of how to manage fishery resources.

Source: European Commission, Ernesto Penas,
http://www.conxemar.com/v_portal/informacion/informacionver.asp?cod=3060&te=413&idage=3752

2.2. Control and enforcement**KEY FINDINGS**

- Control measures can be adopted by EU institutions, but implementation is the responsibility of the respective Member States.
- Control measures at the EU level over time focused on enhanced cooperation, clarification on division of responsibilities, and better compliance and harmonisation of application of rules.
- The most important step taken to enhance cooperation has been the creation of joint inspection structures through the use of the European Fisheries Control Agency.
- It is expected that discard rules as a result of new landing obligations will pose a risk for fisheries compliance.
- EU control regulations leave room for manoeuvrability to Member States when enforcing fisheries rules. They are to take appropriate, proportional and dissuasive measures to avoid infringements of the Common Fisheries Policy. The European Commission can evaluate whether Member States implement this effectively.

The control and enforcement of EU fisheries rules is set out in the so-called Control Regulation. This consists of 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 policy²¹, and Commission implementing regulation (EU) No 404/2011 laying down detailed rules for the implementation.²² The policy aims to ensure that rules are both monitored and enforced. Control measures can be adopted by EU institutions, however, implementation is the responsibility of the respective MS.

The Control Regulation entered into force in 2010. It was adopted in line with measures taken in 2008 to combat illegal fishing. Control measures were also addressed in the 2002 and 2014 CFP reforms. Measures over time focused on three angles: enhanced cooperation; clarification on division of responsibilities; and better compliance and harmonisation of application of the rules.

Concerning enhanced cooperation, the most important steps taken have been the creation of a Joint Inspection Structure (JIS) through the use of the EFCA.²³ The Control Regulation sets out the general principles in which MS are to '*adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring control, inspection and enforcement of activities carried out within the scope of the CFP*'. The MS should coordinate these activities through a specific authority and these are responsible for cooperation with the EC and the EFCA.

2.2.1. Control

MS are empowered to carry out inspections by themselves, however research points out that joint efforts through Joint-Deployment Plans (JDP) make up a significant proportion of all inspections.²⁴ JDPs are established for fisheries or areas that are considered a priority. These can be in EU or international waters in collaboration with MS and/or Regional Fisheries Management Organisations (RFMO). The EFCA coordinates and implements European obligations under international control schemes. JDPs exist, for example, for the Baltic Sea, North Sea, Western Waters and the Mediterranean. All JDPs involve multiple species and cover multi-annual activities. Since 2009, the EFCA and MS carried out 12 700 inspections. The number of inspections per year increased steadily. Most infringements are detected ashore.²⁵

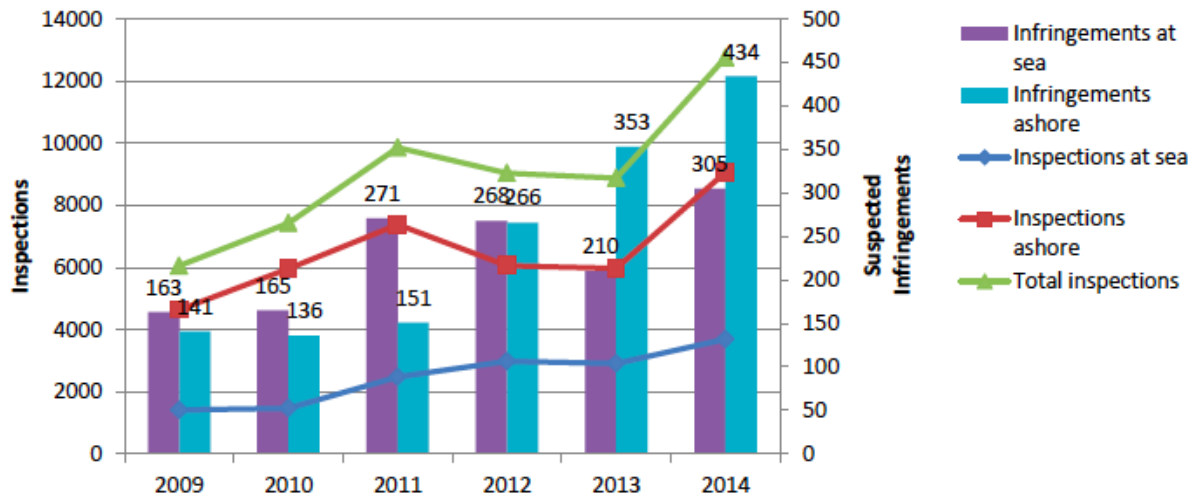
²¹ EUR-LEX (n.d.). Council Regulation (EC) No 1224/2009 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1224> [Accessed on 10/10/2015]

²² EUR-LEX (n.d.). Commission Implementing Regulation (EU) No 404/2011 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0404> [Accessed on 10/09/2015].

²³ EFCA (2013). Tools to improve a Culture of Compliance [WWW]. Available from: https://www.google.es/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CCqQFjACahUKEwi6m_6fv-rIAhULPxQKHjYjgAS8&url=http%3A%2F%2Fwww.europarl.europa.eu%2Fdocument%2Factivities%2Fcont%2F201304%2F20130424ATT65012%2F20130424ATT65012EN.pdf&usq=AfQjCNFJmq-Scys9c1yI8zDo9CFIZ308eQ&sig2=4DVG08cyZVAS_yP8SXuR-w&cad=rja [Accessed on 12/01/2016].

²⁴ EFCA (2012). Five year independent external evaluation report [WWW]. Available from: <http://efca.europa.eu/content/external-evaluation> [Accessed on 10/01/2016].

²⁵ EFCA (2015). Annual Report 2014 [WWW]. Available from: <http://efca.europa.eu/content/annual-report-2014> [Accessed on 25/09/2015].

Figure 1: EU inspections and infringements

Source: EFCA Annual Report 2014

The ratio for suspected infringement by inspection in JDP varies per year. In 2014 the ratio of suspected infringements in the Mediterranean Sea JDP increased significantly from approximately 6% to 16%. This is primarily due to the increase of the scope of the JDP to other species of fish. Given the complexity and costs of fisheries inspections (especially at sea) the EFCA increasingly promotes the use of risk management in order to prioritise fishery threats. This way methods are determined that allow for estimating the likelihood of specific infringements taking place. A newly identified risk area relates to the discards threats as a result of new landing obligations foreseen in the 2014 CFP reform. A risk analysis exercise for the North Sea JDP concluded by the EFCA in 2014 shows various high risk areas, such as: fishing in a closed area / season; high grading or illegal discarding of catches; and failure to report a landing.

2.2.2. Enforcement

Enforcement of the CFP is primarily the responsibility of the MS. Measures concerning compliance of the CFP are foreseen in Article 89 of Council Regulation (EC) No 1224/2009. This states that MS '*shall ensure that appropriate measures are systematically taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons suspected of a breach of any of the rules*'. It further provides indications on proportionality of the sanction by stating that the '*overall level of sanctions and accompanying sanctions shall be calculated, in accordance with the relevant provisions of national law, in such way as to make sure that they effectively deprive those responsible of the economic benefit derived from their infringement without prejudice to the legitimate right to exercise their profession*'. Importantly, the regulation also addresses the need for effectiveness in terms of preventing violations and avoiding recidivism. Sanctions should be '*capable of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind*'. Finally, Article 89 refers to the need for harmonisation by stating that '*competent authorities of the Member State having jurisdiction in the event of an infringement shall, without delay and in compliance with their procedures under national law, notify the flag Member States, the Member State of which the offender holds the citizenship, or any other Member State with an interest in following up the administrative action, criminal proceedings or other measures taken and of any definitive ruling relating to such infringement, including the number of points assigned in accordance with Article 92*'.

While MS are primarily responsible for enforcing the CFP, the EC is tasked to evaluate whether the MS apply the rules appropriately. Article 96 states that the EC can do this by means of '*examination of information and documents and by conducting verifications,*

autonomous inspections and audits'. Article 100 states that audits may include an evaluation of the '*national system of sanctions, including the adequacy of the sanctions imposed, duration of proceedings, economic benefits forfeited by offenders and the deterrent nature of such system of sanctions*'. Once the EC considers that irregularities have occurred in the implementation of the rules or that the existing control provisions and methods in the MS are not effective, it shall inform the MS. The MS shall conduct an administrative inquiry. If this does not deal with the shortcomings, the EC shall establish an action plan with the MS. In the event of non-compliance, the EC may decide to suspend for a period of time EU financial assistance payments. A second measure to ensure compliance with the CFP is the potential closure of fisheries (Article 104). If a MS exceeds the fishing quotas, the EC can implement deductions from future quotas or deduct fishing efforts.

2.3. Infringements and sanctions

KEY FINDINGS

- Control measures are taken in line with measures to combat illegal, unreported and unregulated fishing.
- Serious infringements defined by EU rules relate to violations of different fisheries management tools such as spatial planning, technical measures, input and output control measures.
- EU rules allow Member States to impose both administrative and criminal sanctions.
- EU rules set benchmarks for financial sanctions, primarily focussing on limiting potential economic benefits deriving from non-compliance.
- MS flexibility on how to deal with sanctioning poses problems to the EU when dealing with repeat offenders and generates differences in likelihood of being sanctioned and severity of sanctions. The penalty point system has been introduced to counter such challenges.
- The introduction of the penalty point system requires Member States to adjust their legal framework, adopt an administrative framework (appoint a responsible executive agency, establish a national registry of infringements).
- The penalty point system as detailed in the EU rules applies to fishing license holders. In addition, Member States are required to also adopt a similar system for masters of vessels.

The Control Regulation outlines the procedure in the event of an infringement (Article 82).²⁶ When an official detects an infringement of the CFP during an inspection, this will be noted in the inspection report, evidence will be collected and stored, and this will be forwarded to the competent authorities. Also, the official shall inform the '*natural or legal person suspected of having committed the infringement or which was caught in the act while committing the infringement that the infringement may result in the assignment of the appropriate number of points in accordance with article 92*'.

²⁶ EUR-LEX (n.d.). Council Regulation (EC) No 1224/2009 [WWW]. Available from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009R1224> [Accessed on 10/10/2015]

2.3.1. Serious infringements

Article 92 refers to the point system for serious infringements. Serious infringements are defined in the IUU Regulation (Council Regulation (EC) No 1005/2008, Article 3).²⁷ This states that fishing vessels *'shall be presumed to be engaged in IUU fishing if it is shown that, contrary to the conservation and management measures applicable in the fishing area concerned, it has:*

- (a) *fished without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State; or*
- (b) *not fulfilled its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system, or prior notices under Article 6; or*
- (c) *fished in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth; or*
- (d) *engaged in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited; or*
- (e) *used prohibited or non-compliant fishing gear; or*
- (f) *falsified or concealed its markings, identity or registration; or*
- (g) *concealed, tampered with or disposed of evidence relating to an investigation; or*
- (h) *obstructed the work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures; or the work of observers in the exercise of their duties of observing compliance with the applicable Community rules; or*
- (i) *taken on board, transhipped or landed undersized fish in contravention of the legislation in force; or*
- (j) *transhipped or participated in joint fishing operations with, supported or re-supplied other fishing vessels identified as having engaged in IUU fishing under this Regulation, in particular those included in the Community IUU vessel list or in the IUU vessel list of a regional fisheries management organisation; or*
- (k) *carried out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation and is flagged to a State not party to that organisation, or not cooperating with that organisation as established by that organisation; or*
- (l) *no nationality and is therefor a stateless vessel, in accordance with international law.'*

The IUU Regulation also establishes benchmarks for sanctions in case of serious infringements. Article 43 reminds MS that upon detection of a serious infringement, immediate enforcement measures are to be taken in conformity with the national law.²⁸

Article 44(2) adds that MS *'shall impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement. In case of a repeated serious infringement within a five-year period, the Member States shall impose a maximum sanction of at least eight times the value of the fishery products obtained by committing the serious infringement.'* Alternative to fines, the Member States are also allowed to impose criminal sanctions. Article 45 describes accompanying sanctions such as:

1. *the sequestration of the fishing vessel involved in the infringement;*
2. *the temporary immobilisation of the fishing vessel;*
3. *the confiscation of prohibited fishing gear, catches or fishery products;*

²⁷ EUROPEAN COMMISSION (n.d.). The EU rules to combat illegal fishing (IUU) [WWW]. Available from: http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/index_en.htm [Accessed on 10/01/2016].

²⁸ Such measures are: (a) *the immediate cessation of the fishing activities;* (b) *the rerouting to port of the vessel;* (c) *the rerouting of the transport vehicle to another location for inspection;* (d) *the ordering of a bond;* (e) *the seizure of fishing gear, catches or fisheries products;* (f) *the temporary immobilisation of the fishing vessel or transport vehicle concerned;* (g) *the suspension of the authorisation to fish.*

4. *the suspension or withdrawal of authorisation to fish;*
5. *the reduction or withdrawal of fishing rights;*
6. *the temporary or permanent exclusion from the right to obtain new fishing rights;*
7. *the temporary or permanent ban on access to public assistance or subsidies;*
8. *the suspension or withdrawal of the status of approved economic operator granted pursuant to Article 16(3).*

Serious infringements as defined in the IUU Regulation are applicable to *'all trade of marine fishery products, processed or not, originating from third country fishing vessels and exported to the European Community by any means of transportation'*.²⁹

Box 2: rationale fisheries infringements and sanctions

Rationale fisheries infringements and sanctions

The principle driver behind illegal fishing activity is economic benefit. This implies that once a fisherman financially gains sufficiently with legal fishing activity, the likelihood of illegal activities decreases. Determining the potential benefit depends on various factors such as quantity of catch that can be illegally caught, the time needed to engage in illegal activity, cost of fishing, and of course the price of the fish.

The OECD highlights that the detection likelihood is relevant when deciding to engage in illegal fishing activity. The *'higher the probability of getting caught the lower the incentive to cheat, ceteris paribus, and hence, the higher the risk that the violator will be caught'*.¹ The factors that contribute to this are: the effectiveness and efficiency of the enforcement system; the social acceptance of cheating in society; awareness of the regulations; and the level of non-governmental or private organizations involvement in detecting infringements. This taps into another important factor influencing the decision to engage in illegal fishing activity, namely the severity of the penalty. The more severe the penalty, the lower the likelihood of engaging in illegal activity. This is strongly related to the enforcement of fishery rules and imposed sanctions could include: fines; confiscation of vessel or catch; exclusion from fishery; and application of penalty in case of recidivism.

Source: <http://www.oecd.org/tad/fisheries/31420980.PDF>

2.3.2. Penalty point system

The penalty point system has been established in order to ensure that rules are applied in the same way for all MS and to harmonise sanctioning of infringements. Article 92 of the Control Regulation describes a system that assigns points to natural or legal persons held responsible for serious infringements. MS are to:³⁰ *'Assess alleged infringements involving vessels registered under its flag, using standard EU definitions; Impose a pre-set number of penalty points on vessels involved in serious infringements (points are recorded in the national registry of fisheries offences); Suspend the vessel's licence for 2, 4, 8 or 12 months when a pre-set number of points have been accumulated in a 3-year period.'*

²⁹ EUROPEAN COMMISSION (2009). Handbook on Council Regulation (EC) No. 1005/2008 [WWW]. Available from: http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/handbook_original_en.pdf [Accessed on 25/10/2015]

³⁰ EUROPEAN COMMISSION (n.d.). Infringements and sanctions [WWW]. Available from: http://ec.europa.eu/fisheries/cfp/control/infringements_sanctions/index_en.htm [Accessed on 14/10/2015].

The point system applies only to serious infringements as defined in the IUU Regulation. Points are assigned to the fishing licence that is linked to a vessel. In addition, the rules also require MS to establish a point system for masters of fishing vessels. As from January 2012, MS should have introduced a system, including a national register of infringements. Article 93 states that Member States shall include in a national register all infringements of the rules of the CFP committed by vessels flying their flag or by their nationals, include the sanctions they incurred and the number of points assigned. Each MS is required to appoint one single authority to administer the system. This would be in practice the respective fisheries ministry or agency. The flag state authority is responsible for the assigning of points, even when the infringements are detected in another Member State.

Annex XXX of the Implementation Regulation (EU) No 404/2011 specifies how many points are to be assigned for each specific serious infringement. In case multiple infringements are detected during one inspection, the points can be summed up, not exceeding 12 points (Article 162, Implementation Regulation).

Table 3: types of serious infringements

Types of Infringements	Points
Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State.	7
Not fulfilled its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system.	3
Fishing in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth.	6
Engaging in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.	7
Use of prohibited or non-compliant gear according to EU legislation.	4
Falsification or concealing its markings, identity or registration.	5
Concealing, tampering with or disposal of evidence relating to an investigation.	5
Obstruction of work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures; or the work of observers in the exercise of their duties of observing compliance with the applicable Union rules.	7
Taking on board, transshipping or landing undersized fish in contravention of the legislation in force.	5
Transshipping to or participating in joint fishing operations with, support or re-supply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation.	7
Carrying out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation.	5
Use of a fishing vessel with no nationality and that is therefor a stateless vessel in accordance with international law.	7

When the total number of points assigned equals or exceeds a determined threshold, the fishing licence will be automatically suspended. Sanctions increase in severity when offenders repeat crimes. Points are cumulative and remain active even after a sanction has been imposed. However, points can formally be annulled once offenders do not commit a serious infringement within three years from the last infringement. Moreover, Article 133 of the Implementation Regulation states that in case of good behaviour points can be deducted.³¹ Points are cumulative, also after a license has been temporarily suspended. The points are assigned to the licence and therefore transferred where a vessel or licence is sold.

Table 4: penalty point system scheme

Offender	Points	Fishing licence
First time	18	2 months suspension
Second time	36	4 months suspension
Third time	54	8 months suspension
Fourth time	72	1 year suspension
Fifth time	90	Permanent suspension

³¹ This applies in case: (a) the fishing vessel which has been used in committing the infringement for which points were assigned uses thereafter VMS or records and transmits thereafter fishing logbook, transshipment and landing declaration data electronically without being legally subject to these technologies; or (b) the holder of the fishing licence volunteers after the assignation of points to take part in a scientific campaign for the improvement of the selectivity of the fishing gear; or (c) the holder of the fishing licence is a member of a producer organisation and the holder of the fishing licence accepts a fishing plan adopted by the producer organisation in the year following the assignation of the points involving a reduction of 10 % of the fishing opportunities for the holder of the fishing licence; or (d) the holder of the fishing licence joins a fishery covered by an eco-labelling scheme that is designed to certify and promote labels for products from well-managed marine capture fisheries and focus on issues related to the sustainable use of fisheries resources.'

2.4. EU fleet economic performance

KEY FINDINGS

- The EU fisheries industries are very diverse, operate in different regions, use different fishing techniques and catch different species.
- 2014 and 2015 economic performance data shows that large-scale and distant-water fleets perform relatively well in comparison to small-scale fleets in the EU.
- Economic performance of the fisheries industry is affected by a multitude of factors, namely fuel prices, market prices for fish, situation of fish stocks, management plans and fleet reductions.
- Factors that contribute to better economic performance are: recovery of stocks; research and innovation; capacity reduction; lower fuel prices; implementation of certification schemes and demand for certified products; efficiency of fishing techniques and fishing behaviour.
- Factors that contribute to poor economic performance are: low sales prices; effects of the global crisis; export embargos; reduced TACs and quotas; market saturation; quality of species; weather conditions; damage caused by marine mammals; shortage of local crew; and closed areas for stock recovery.
- Each EU Member State is characterised by different trends concerning economic performance of the fisheries sector.
- An important obstacle in determining economic performance is the lack of available data in some Member States.

This section aims to identify relevant information on which factors contribute to economic performance of the EU fleet and explore to which extent the PPS plays a role in this. The main source of information concerning the economic performance of EU MS is the EU's Annual Economic Report (AER).

The data presented by the EU shows that the EU fisheries industries are very diverse, operate in different regions, use different fishing techniques and catch different species. Data from the EU's 2014 AER shows that large-scale and distant-water fleets perform economically relatively well.³² Small-scale fleets tend to perform worse. Multiple factors influence the economic performance, such as fuel prices, market prices for fish, situation of fish stocks, management plans, fleet capacity reductions, etc. In 2012, the EU fleet generated EUR 6.9 billion in revenue. Data from the 2015 AER shows in 2013 a slight increase of Gross Value Added from EUR 3.3 billion in 2012 to EUR 3.4 billion and a gross profit of EUR 1.3 billion. Net profit was estimated at EUR 506 million in 2013 compared to EUR 458 million in 2012. In 2013 the EU fishing fleet included 83 734 vessels with a combined gross tonnage of 1.6 million tonnes and engine power of 6.5 million kilowatts. An estimated 65,363 vessels were active in 2013 of which 74% were small-scale, 26% large-scale and 1% distant-water vessels. Approximately 149,000 fishermen are directly employed by the sector. The average wage per fisherman was estimated at EUR 23,000. Differences between MS are large with EUR 120,000 on average for Belgian fishermen compared to EUR 8,000 for Greek fishermen.

³² EUROPEAN COMMISSION (n.d.) Economic Analysis (fleet, processing, aquaculture) [WWW]. Available from: <https://stecf.jrc.ec.europa.eu/reports/economic> [Accessed on 14/09/2015].

According to the AERs, economic performance of the EU fleet depends on multiple factors. For example, factors that contribute to improvements include, but are not limited to: recovery of stocks; research and innovation; capacity reduction; lower fuel prices; implementation of certification schemes and demand for certified products; efficiency of fishing techniques; and fishing behaviour. Factors that contributed to poor economic performance include: lower average of sale prices; effects of the global crisis; export embargos; reduced TACs and quotas; market saturation; quality of species; weather conditions; damage caused by marine mammals; shortage of local crew; and closed areas for stock recovery.

Based on the data presented above, we note that the wide range of factors contributing to economic performance of the EU fleet, in combination with the significant differences between the MS, poses challenges to attributing impact of the PPS to the different fleet segments. At the same time, the recent implementation of the PPS casts doubts as to whether at this stage a EU-wide analysis can be performed on the impact of the system. In addition, there is no comprehensive dataset available on the penalty points assigned to date. Therefore, in order to better understand socioeconomic impact of the PPS this study relies on case-by-case information collected from MS authorities and other stakeholders such as industry and civil society stakeholders.³³ The following chapters will present the findings of this exercise.

³³ Note that data collection from different stakeholders is affected by the time-frame of this study (august-october 2015) and at the same time depends on access and availability of such data. Further, information is collected and presented in different formats, languages, and ways posing significant challenges to allow for comparison.

Box 3: economic performance of the EU fleet**Economic performance of the EU fleet: an overview of trends**

The economic reports from 2015 identify a wide variety of economic trends in MS. Belgium experiences a decrease in fleet capacity and employment. At the same time, the industry faces high operating costs. In Croatia, the fleet is performing well due to improved fishing efficiency and continued investments. However, differences are identified between fleet segments with especially large-scale fleet segments performing much better in general compared to small-scale fleet segments. In Cyprus, the fleet is characterised by using primarily passive gears and consisting of mostly small-scale vessels. Denmark experiences a trend towards larger profits driven largely by the large-scale fleet. Estonia has seen an increase of small-scale vessels primarily due to new registration measures. The Finnish fleet is on the one hand affected by food embargoes imposed by Russia while EU subsidy schemes have contributed, on the other hand, to new fishing methods and the creation of markets for non-commercial species. France's fisheries industry is operating both in the Atlantic as well as in the Mediterranean. As a consequence, there are significant differences between ports, fishing gears used and targeted species. The German fleet decreased in terms of vessel numbers in 2013 and 2014. Fleet segments are affected differently by price and quota developments and future problems are expected due to area closures. In addition, the industry is concerned about the implementation of discard bans. Greece's fleet consists primarily of small-scale vessels (85.6%). Data on economic performance is limited. In Ireland the fleet improved profit margins while in Italy performance was negative in 2013. In Latvia, Lithuania, Romania, and Slovenia the fleets decreased significantly since 2008. The Netherlands invested in new fishing methods, which allowed for fuel reduction and costs, better wages and profitability, less discards and reduced impact on the seabed. The distant-water fleet in the Netherlands recorded less landing due to problems with effort in 2012 in African and Pacific waters. As a consequence, part of the capacity of the Dutch fleet was tied up. In Poland, the Baltic Sea fleet decreased weight and value of landings. Economic performance deteriorated in 2013. The Polish small-scale fleet is heavily subsidised. Spain, being one of the most important EU fishing nations, experienced a significant decrease in terms of number of vessels, engine power and gross tonnage. The effort to reduce capacity is aiming to balance with fishing opportunities. While profitability decreased in 2013, the country expects that this will increase in 2014 and 2015 in line with general economic recovery. The Swedish fleet is highly diversified and operates with a wide range of vessels types, targeting different species. The country's small-scale fleet is performing poorly while the large-scale fleet is making net profits. The UK experienced steady decrease of vessels but maintains capacity levels due to the use of newer boats. Impact assessments indicate that the upcoming landing obligations will have significant impact on economic performance. A report commissioned by Seafish suggests that access is required to additional quota in order for some segments to continue operating. Finally, various countries provide limited data on economic performance, such as Bulgaria, Cyprus, Malta.

Source: <https://stecf.jrc.ec.europa.eu/reports/economic>

3. ASSESSMENT

The EU's fisheries control system, including the PPS, aims to promote transparency and ensure non-discrimination between MS and between the EU and third country fisheries. This assessment aims to identify caveats in implementation and assess to which extent the objectives have been met.

3.1. Non-discrimination

KEY FINDINGS

Section 3.1.1:

- The diversity of the fisheries industry, lack of complete economic data and lack of detailed data on sanctioning complicate measuring the socioeconomic impact of the penalty point system.
- Industry players consulted for this study confirm the added value of a harmonised sanctioning system in the EU.
- The fact that flag states are responsible for applying the penalty points raises concerns from industry players that inspection authorities might target national vessels because of an increased likelihood of sanctions materialising.
- Risks have been identified that inspection authorities do not always have access to relevant data to effectively inspect foreign vessels.
- Different approaches to output control pose problems to Member States when they follow-up with flag states on detected infringements.
- Industry players consulted for this study highlight that some fishing activities (such as the risk for by-catch in the case of pelagic fish versus white fish) are more risk sensitive for non-compliance.
- Industry players consulted for this study confirm that bureaucratic requirements resulting from EU rules contribute to the risk of non-compliance.
- Industry players consulted for this study highlight that small-scale vessels are disproportionately affected by the penalty point system especially concerning the impact of the sanctions.
- Sanctions associated with the penalty point system have secondary effects. Apart from suspending the license, points also decrease the value of their vessels.
- Industry players consulted for this study find permanent suspension of one's license disproportionate, especially in the case of masters of vessels as this takes away their right to earn a living.
- The industry is suffering from the differences in national implementation of the penalty point system but at the same time lacks willingness to address issues. There is a risk that advantages from weak implementation of the PPS at the EU level weigh up against the advantage of an equal level playing field in terms of enforcement.

Section 3.1.2:

- EU Member States fear that low levels of monitoring, control and surveillance in one area could lead to low probability of detection of infringements and increase benefits resulting from non-compliant behaviour.
- EU Member States fear that strong enforcement in one area could result in fishermen changing their activities to areas with lower enforcement pressure.

- EU Member States highlight that the level of implementation of control measures could have effect on the degree of enforceability of the penalty point system.
- EU Member States confirm that inspection and sanctioning activities are often decoupled which could result in difficulties to enforce regulation and address the issue of recidivism.
- EU Member States and civil society confirm that collaboration between countries is essential, especially in order to deal with complex ownership structures.
- EU Member States have identified compatibility difficulties between the penalty point system and national administrative sanctioning mechanisms.
- EU Member States apply different criteria for defining whether an infringement is serious or not. This generates confusion.
- The sequence of activities that take place from the moment of detecting an infringement to the moment points are assigned varies per Member State.
- EU Member States needed time to adjust their legal framework in order to introduce the penalty point system. This explains differences between countries when starting to implement.
- EU Member States needed to adopt their administrative framework in order to address EU requirements concerning the penalty point system. The most problematic issue was how to adopt a system for masters of vessels.

Section 3.1.3:

- The responsibility for implementation of the penalty point system lies with the Member States. However, the consequence of difference in the implementation reflects on the legitimacy of the Common Fisheries Policy as a whole.
- Efforts to enhance EU collaboration through the European Fisheries Control Agency primarily focuses on inspection and lacks attention to sanctioning.

Implementing a system in a harmonised way is important in order to avoid that its effect might be disproportionally damaging to certain actors. First of all, administrative obstacles relating to control efforts might be damaging for the industry. They could increase costs for those fishermen that do abide by the rules and even force them to adopt incompliant behaviour. Secondly, apart from the industry, also authorities could be faced with additional administrative burden due to the control system. For example, detection of serious infringements in relation to third country fisheries might be burdensome on customs authorities. Thirdly, harmonised implementation of a control system is important to avoid shifting the problems to regions that are less controlled. This applies at the EU level between MS but also in relation to the global market where European vessels also operate.

3.1.1. Industry feedback

For the purpose of this in-depth analysis, key industry stakeholders have been targeted through desk research, interviews and surveys to identify challenges in the implementation of the PPS and its impact.

Measuring the socioeconomic impact of the PPS on different fleet segments is confronted with various challenges. First of all, the fishery industry is diverse and involved in many different fishery activities. It includes players such as producers, processors and retailers. Incompliant behaviour of industry players could occur on different levels involving, for example, directly or indirectly beneficial owners of vessels, masters of vessels or crewmembers. Stakeholders consulted for this study distinguish two different angles when looking at the implementation and impact of the PPS: the likelihood of being sanctioned and the severity of the penalty.

3.1.1.1. Likelihood of sanctions

Overall, industry players supported the idea of harmonised sanctioning throughout the EU. However, stakeholder interviews pointed out concerns regarding the likelihood of being sanctioned. It was argued that inspection authorities could prioritise control efforts that can effectively lead to sanctions. This meant that national vessels were primarily targeted given that for effective sanctioning of foreign vessels, authorities would have to depend on collaboration of other flag state authorities. In other words, national inspection authorities, when detecting serious infringements of foreign vessels, need to rely on the flag state authorities to follow-up on the infringement.

It was also noted that national inspection authorities do not always have access to relevant data in order to effectively inspect foreign vessels. For example, late or not up-to-date information on quotas operated by vessels complicates inspection of foreign vessels. In addition, different national approaches to issues such as quota-swaps create difficulties when enforcing control measures.

Another concern voiced by industry players was that inspection authorities could target vessels fishing with difficult quotas. Especially new rules on banning discards could cause difficulties for vessels targeting specific species. For example, some species are considered 'cleaner' in the sense that there is less chance for by-catch, such as is the case for pelagic fish. When fishing for other species, such as white fish (e.g. cod and haddock), fishermen run the risk of more by-catch, which increases chances of quota infringements. In other words, those vessels that fish difficult species might have an increased chance of being affected by the penalty point system. In concrete terms, the industry players consulted for this study confirmed that operators struggle with compliance due to bureaucratic requirements.

3.1.1.2. Severity of sanctions

Concerning the severity of the sanction, industry players highlighted that especially smaller vessels are disproportionately sanctioned by the PPS. Removing the fishing license from smaller vessels in principle means that the concerned business ceases to exist. Larger companies have more possibilities to cover losses.

Another concern voiced by industry players concerning the PPS is the fact that the penalty has secondary consequences. Apart from not being able to fish in case of suspension of licence, the industry also struggles with the fact that assigned points lower the value of their vessels. In addition, there are concerns that vessel owners with points receive less access to public funding or will be required to return obtained subsidies.

Also the adoption of the PPS for masters of vessels is creating concerns. Industry players highlight that in some cases masters of vessels are also owners of the licence. Further, it is noted by players that penalties linked to the points are disproportionate, especially in the case of permanent suspension. It is pointed out that permanent suspension of someone's licence has severe consequences and violates one's right to earn a living.

Box 4: Galicia's industry on the barricades

Galicia's industry on the barricades

In April 2015, various Galician industry players combined efforts to oppose the PPS. Pescagalicia-Arpega-O Barco in collaboration with the foundation Fremss advocate the immediate suspension of the PPS. The stakeholders argue that no other economic activity in the EU is subject to such a system. The Secretary-General from Pescagalicia points to the fact that no other type of businesses can lose their licence for life after having committed some kind of serious infringements.

The organisation highlights various challenges such as the obligation to notify two and a half hours in advance arrival to port while many vessels are only one hour away from port. In addition, the obligation to weigh-in upon arrival is not always feasible, especially when ports do not have sufficient capacity.

Source: http://www.lavozdeg Galicia.es/noticia/maritima/2015/04/06/ofensiva-galicia-desterrar-pesca-carne-puntos/0003_201504G6P22991.htm

In concrete terms, the industry players consulted for this study confirmed risks of discrepancies in the MS' implementation of the PPS. In addition, it was suggested that within the industry there is limited interest in addressing this issue with their respective MS. Industry representatives that claim that MS authorities effectively implement the PPS highlighted that unequal implementation at the EU level causes problems to their members. However, they also noted that industry representatives from those countries perceived to lack in implementation are less interested in addressing the problem at the EU level. In other words, the industry is suffering from the differences in national implementation of the PPS, but at the same time lacks willingness to address this. Arguably, for the industry, advantages from weak implementation of the PPS on the EU level weigh up against the advantage of an equal level playing field in terms of enforcement.

3.1.2. Member State feedback

Data was collected from MS through desk research and a survey. MS were asked to provide feedback on challenges in the implementation of the PPS. Three different categories of challenges were identified: implementation differences between MS; lack of international collaboration; and MS system-specific problems.

3.1.2.1. Implementation differences

The use of different approaches for the implementation of the system is flagged as an important challenge, as well as, communication with national authorities of other countries. When dealing with third countries, MS identified challenges in the application of IUU regulations. Another challenge identified by MS was the possibility to assign a different number of points for similar infringements and the use of different criteria in order to define serious infringements.

MS fear that low levels of monitoring, control and surveillance (MCS) in one area could lead to low probability of detection of infringements and increase benefits resulting from incompliant behaviour. At the same time, high MCS in one area could result in fishermen changing their activities to areas with lower MCS.

Another potential area for concern is that differences in implementation of other elements of the CFP, such as TAC setting or electronic logbook requirements, might have impact on effective implementation of sanctioning mechanisms. In other words, the effectiveness of the PPS does not depend on its implementation alone. For example, the level of implementation of the electronic recording and reporting system at the national level could have impact on the degree of enforceability of the PPS.

3.1.2.2. Lack of international collaboration

International collaboration is a key aspect in order to address IUU fishing but also compliance with CFP in EU waters. While control efforts are increasingly organised in an international setting, sanctioning remains nationally enforced. Inspection and sanctioning are decoupled resulting in difficulties to enforce the regulations and address issues such as recidivism.

Collaboration between MS is essential, especially in order to deal with complex ownership structures. Collaboration should involve the exchange between MS of inspection and sanctioning schemes. If MS do not enhance collaboration, there is a risk that some fleet segments are disproportionately affected by sanctioning mechanisms. For example, without international collaboration it is difficult to sanction a serious infringement detected in country A, by a vessel registered in country B, and owned by a company in country C. As a consequence, MS might only be successful to sanction easier cases, involving a vessel that violates and operates all in the same country. Arguably, smaller family-owned vessels might have a higher likelihood of being sanctioned.

3.1.2.3. MS system-specific problems

When looking at MS' internal issues, MS identified problems with compatibility of the PPS with national administrative sanctioning. In addition, MS experience problems with defining criteria for serious infringements. Most importantly, MS acknowledged that slow sanctioning procedures posed challenges to the effectiveness of the PPS.

Concerning the latter. The sequence of activities once an infringement has been identified varies per MS.

For example, in the UK when an offence is detected, an investigation is considered and effected if deemed appropriate. The investigation aims to determine the facts of the case and the assigned official may decide to deal with the case through a verbal debrief, official written warning or a financial administrative penalty. If appropriate, the case could be referred for prosecution.

In Ireland, once an infringement is detected this will be reported to the control authorities where it will be assessed by a special point panel. The case file will then be sent to the Director of Public Prosecutions and presented in court for sanctioning.

In Croatia an inspection report is drafted after which a decision is taken on the penalty. The final decision on the penalty is taken in court after which inspectors recap in order to assign a number of penalty points.

In Cyprus an infringement notice is issued once an infringement has been detected. The case information will be forwarded to the Director of the Department of fisheries and marine research within two months. After this a decision is made on whether it concerns a serious infringement and points can be assigned. The violator will be informed and can appeal within ten days. The appeal can be made to the Minister of Agriculture.

The EC informed that after taking stock of the implementation of the CFP by MS, various challenges were identified. First of all, MS needed to modify national legislation, which takes time. This explained the differences between MS when introducing the PPS. Secondly, MS had to establish an administrative framework to deal with the PPS. Previous studies conducted by Blomeyer & Sanz highlighted the variety of authorities involved in implementation of sanctioning mechanisms. This complicates internal management of the PPS. In some MS, the courts are the competent authority to impose sanctions, while in others an administrative authority is empowered to impose sanctions. Often this is the Minister responsible for fisheries or a top official of the fisheries administration. In some instances, fisheries inspectors have law enforcement competences and are allowed to impose fines. In other MS, inspectors can only inspect and need to call in law enforcement in order to secure evidence and sanction. *'The competence to impose administrative*

sanctions may be hierarchically divided between authorities, depending the gravity of the infringement, and/or may be divided between governmental levels, for example in case of federal countries'.³⁴ Thirdly, the EC highlighted that the EU requirements posed challenges to MS, in particular the requirement to adopt also a PPS for masters of vessels. The main reason why the EC did not specify such a system for masters of vessels is due to different licensing and registration systems in MS. For example, a master or a license can have different vessel entitlements.

Box 5: Irish judicial review of the PPS

Irish judicial review of the PPS

In August 2015, Irish media reported on a case involving a Danish vessel that was caught fishing without a quota in Irish waters. The SFPA notified Danish authorities that the vessel did not have an appropriate quota. Instead of assigning points to the vessel, the Danish authorities supposedly allowed retrospectively a quota swap with the Netherlands.

Irish fishermen responded outraged by the practice claiming that the lenient application in other EU MS and strict application of the PPS by Ireland creates unfair advantage for foreign vessels. The SFPA noted that continuous efforts are made to solve this issue with Danish authorities. A spokesperson highlighted that *'under EU law the final steps necessary fro the assigning of points to a fishing license remain a matter for the competent authority of the flag state. In this instance, the flag state has indicated that they are unwilling to progress the matter'*.

Soon after, one of Ireland largest fishing industry organisations (Irish Fish Producers' Organisation - IFPO) decided to support a judicial review of the PPS, describing it as *'perverse, flawed and unfair'*. The organisation argued that the Irish authorities are the only EU MS implementing the system while foreign vessels fish with impunity. Apart from the discrepancy in international implementation, the organisation also flagged internal procedural problems.

Feedback received for this study from the IFPO indicates that the main objective of the judicial review is to solve procedural problems with the system in Ireland. In addition, the IFPO noted that it supports the idea of the system but calls for equal application across the EU

Source: <http://www.independent.ie/irish-news/politics/penalty-point-system-for-fish-quotas-is-thrown-into-chaos-31441985.html>

<http://www.irishtimes.com/news/ireland/irish-news/fishing-body-backs-judicial-review-of-penalty-points-system-1.2331257>

3.1.3. European Commission feedback

Data was collected from the European Commission through an interview and desk research. The EC plays a role in ensuring enforcement of the EU regulations, however, is confronted with various challenges.

A first challenge is to collect reliable and complete data on fisheries from the MS. For example, the 2014 AER notes that various countries provide limited data in order to

³⁴ EUROPEAN PARLIAMENT (2014). The Common Fisheries Policy – Infringement Procedures and Imposed Sanctions throughout the European Union [WWW]. Available from: <http://www.europarl.europa.eu/committees/en/pech/supporting-analyses.html?action=2> [Accessed on 05/10/2015].

estimate economic performance. In addition, catch data is another area of concern given that unreliable data could result in unrealistic setting of TACs.

A second challenge is the fact that responsibility for implementation of the control system lies primarily with the MS. However, the consequences of differences in the implementation on the national level reflect on the functioning of the CFP as whole. After all, such discrepancies can be perceived as discriminatory and could undermine the relevance of the common EU policy.

A third challenge is that efforts to enhance EU collaboration on inspection activities, primarily through the use of the EFCA, are not necessarily focusing on sanctioning of infringements. Little evidence has been found that the EFCA also pools resources to address the issue of sanctioning. While the agency aims to enhance MS collaboration on control issues and deploys joint inspection activities, little focus has been placed on promoting enhanced collaboration on sanctioning. In fact, it raises a more general concern that control is decoupled from sanctioning.

Feedback from the EC indicates that this issue is currently addressed. At the time of this in-depth analysis, the EC is conducting an external assessment of the implementation of the Control Regulation, which also includes the application of the PPS. A summary is expected to be published during the first semester of 2016. In addition, the EC informed that a project team of DG Mare is evaluating the sanctioning systems in the MS. At this point, the findings are subject of on-going investigations, which may lead to the opening of infringement proceedings in the future. As a consequence this information could not be disclosed for the purpose of this in-depth analysis.

3.2. Feedback on impact of the PPS

KEY FINDINGS

- No quantitative data has been identified on the impact of the penalty point system.
- EU Member States consulted for this study indicate that, to-date, no data is available on the impact of the system. This is mainly due to the fact that the system was recently put in place.
- Civil society players highlighted that opacity of the penalty point system is the main reason why no impact assessment can be done at this moment.
- The European Commission confirmed that currently their priority is to ensure that EU Member States have a legal and administrative framework in place. At this stage concrete benchmarks for measuring the impact are lacking.
- The potential impact of the PPS can partially be assessed by looking at inspection efforts on the EU level through JDP campaigns.
- In a scenario where all infringements detected through JDPs in 2014 actually were sanctioned with penalty points (and that all infringements are applicable to EU vessels), most points go to the Baltic Sea, followed by the North Sea.

Apart from anecdotal evidence and expectations on the impact of the PPS, no quantitative evidence was identified with regard to the impact of the PPS. The industry stakeholders surveyed and interviewed for this study note that the system did have impact on their members. However, to our knowledge no structured stocktaking has taken place. The MS consulted for this study indicated that, to-date, no data is available or analysis has been done to measure the impact of the system. The main reason is the fact that the system has only recently been put in place. Civil society feedback also highlights the lack of information on the impact. They confirm the fact that the system has only recently been implemented

but add to this that lack of access to data is key in failing to assess impact. Both economic data and data on the use of the PPS is missing. The EC indicated that the system aims to create a level playing field and prevent recidivism. At this stage the focus of the Commission's work is on ensuring that MS have a legal and administrative framework in place. Currently, clear benchmarks are lacking for measuring impact of the system. The EC also noted that generally research focus is on the effect on larger vessels due to the coherence with IUU regulations.

Some further reflection on the question as to whether the PPS impacts differently on vessels or fisheries conditions brings us to look at how MS target inspection efforts. This could provide some insight as to whether (potentially) more penalty points will be assigned depending on specific vessel sizes, species or other fishing conditions. However, this should be read with caution as data presents many caveats in order for us to be able to draw concrete conclusions on the impact of the PPS on working conditions. This exercise is therefore merely meant to provide food for thought.

One way is to look at risk analysis or control planning on the national level. Another way is EU control effort such as JDPs. For this study we reflect on the latter as we believe this is most complete. After all, JDPs make up a significant proportion of all inspections. As stated in the 2014 briefing note, comprehensive data on MS inspections is not available and for some fishing areas, all inspections are carried out through joint efforts (e.g. NAFO and NEAFC).³⁵ If we look at the JDP campaign reports published on the website of the EFCA we are able to compile data on inspections and detected infringements in 2014.³⁶ This provides insight into inspection efforts, detected infringements, and information on targeted species.

3.2.1. European Fisheries Control Agency JDP detected infringements in 2014

The campaign reports from 2014 show for three JDPs a detailed breakdown of infringements detected during inspections.³⁷ The table below provides an overview per JDP of the infringement types specified by the EFCA and the times detected in 2014. The first column indicates the amount of penalty points that according to the EU regulations should be assigned if sanctioned.

³⁵ EFCA (2012). Five year independent external evaluation report [WWW]. Available from: <http://efca.europa.eu/content/external-evaluation> [Accessed on 10/01/2016].

³⁶ EFCA (n.d.). Joint Deployment Plans [WWW]. Available from: <http://www.efca.europa.eu/content/joint-deployment-plans> [Accessed on 10/01/2016].

³⁷ The Mediterranean JDP did not include a break-down per infringement type and has therefore been left out of this table.

PPS Points	Infringement	Baltic Sea ³⁸	North Sea ³⁹	Western Waters ⁴⁰	Mediterranean ⁴¹
3	Not fulfilling of obligations to record and report catch or catch related data, including data to be transmitted by satellite vessel monitoring system	47	30	10	n/a
4	Use of prohibited or non-compliant gear according to EU legislation	10	9	1	n/a
5	Falsification or concealing of markings, identity or registration	0	0	0	n/a
5	Concealing, tampering or disposal of evidence relating to an investigation	0	0	0	n/a
5	Taking on board, transshipping or landing of undersized fish in contravention of the legislation in force	4	3	0	n/a
7	Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State	1	2	0	n/a
6	Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	0	0	3	n/a
7	Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	1	0	0	n/a
7	Obstruction of work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures or the work of observers in the exercise of their duties of observing compliance with the applicable Union rules	2	1	1	n/a
7	Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as	0	0	0	n/a

³⁸ EFCA (n.d.). Reports 2014 Baltic Sea [WWW]. Available from: <http://www.efca.europa.eu/content/reports-2014-0> [Accessed 10/01/2016].

³⁹ EFCA (n.d.). Reports 2014 North Sea [WWW]. Available from: <http://www.efca.europa.eu/content/north-sea-reports-2014> [Accessed 10/01/2016].

⁴⁰ EFCA (n.d.). Reports 2014 Western Waters [WWW]. Available from: <http://www.efca.europa.eu/content/western-waters-reports-2014> [Accessed 10/01/2016].

⁴¹ EFCA (n.d.). Reports 2014 Mediterranean [WWW]. Available from: <http://www.efca.europa.eu/content/mediterranean-reports-2014> [Accessed 10/01/2016].

	having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation				
7	Use of a fishing vessel with not nationality and that is therefore a stateless vessel in accordance with international law	0	0	0	n/a
3⁴²	The non-transmission of a landing declaration or a sales note when the landing of the catch has taken place in the port of a third country	0	0	0	n/a
4⁴³	The manipulation of an engine with the aim of increasing its power beyond the maximum continuous engine power according to the engine certificate	0	0	0	n/a
7⁴⁴	The failure to land any species subject to a quota caught during a fishing operation, unless such landing would be contrary to obligations provided for in the rules of the common fisheries policy in fisheries or fishing zones where such rules apply.	0	1	0	n/a
?⁴⁵	Others	7	6	9	n/a
<i>Total number of infringements detected</i>		72	52	24	79
<i>Total number of inspections</i>		4197	3208	689	482
<i>Number of infringements detected per 100 inspections</i>		1,72	1,62	3,48	16,39

It is debateable whether to draw from this table concrete conclusions on the impact of the penalty points system on working conditions.⁴⁶ However, for the purpose of launching some

⁴² This type does not directly refer to the types noted in EU regulation. For the purpose of this study we note that this falls under the following infringement type: Not fulfilled its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system (3 penalty points).

⁴³ This type does not directly refer to the types noted in EU regulation. For the purpose of this study we note that this falls under the following infringement type: Use of prohibited or non-compliant gear according to EU legislation (4 penalty points).

⁴⁴ This type does not directly refer to the types noted in EU regulation. For the purpose of this study we note that this falls under the following infringement type: Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State (7 penalty points).

⁴⁵ This type is not further specified in the documentation.

⁴⁶ We reckon that comparing the data between JDPs should be done with caution. Discrepancies between JDPs cannot be clearly explained without researching in greater depth the discrepancies in relation to data on the Mediterranean related to the fact that national controls apply to boats less than 12 meters and fisheries without quotas. This data is not included here given that this is not EFCA competence. This is important given that most boats in the Mediterranean are less than 12 meter in size. The number of bigger boats controlled is proportional to other seas.

debate on this issue, arguably this table shows that inspection efforts through JDPs in 2014 primarily resulted in two types of suspected infringements: 'Not fulfilling of obligations to record and report catch or catch related data, including data to be transmitted by satellite vessel monitoring system'; and 'Use of prohibited or non-compliant gear according to EU legislation'. Secondly, it shows that inspection efforts in the Mediterranean and Western Waters provide the highest ratio of infringements per inspection. Thirdly, this table provides an indication of the division of points per inspection area. In a scenario where all infringements are actually sanctioned with penalty points (and that all infringements are applicable to EU vessels), most points go to the Baltic Sea (50%), followed by the North Sea (37%). The data does not show a breakdown of nationality per infringement.

3.2.2. Vessel size and species

When taking a closer look at the available data it is noted that (unfortunately) this does not provide a break down of inspections per type of vessel. Therefore, the only indication identified that vessels of different sizes are differently affected is the feedback from the European Commission noting that inspection efforts focus primarily on larger vessels. However, when looking at the number of infringement detected per 100 inspections, vessels in the Mediterranean are most impacted. The EFCA states in its annual report that this primarily has to do with the fact that the JDP increased in scope and targets more species. However, we do note that the fleet capacity in the Mediterranean is characterised by a higher number of smaller vessels than in the other fishing areas.

When looking at species, in 2014 the four JDPs prioritised according to the campaign reports: Cod, Herring, Salmon, Sprat, Plaice, Sole, Mackerel, Horse Mackerel, Anchovy, Blue Whiting and Blue Fin Tuna. Cod and herring are species targeted in two JDP, respectively Baltic Sea-North Sea JDPs and Baltic Sea-Western Waters JDPs. The data from the EFCA provides a break down of the amount of tonnes of fish inspected ashore and at sea for each targeted species. However, this data is not complete, for example with no information on the tonnes of blue fin tuna inspected or partial information on the quantity of anchovy inspected. Also, it is not possible to compare the amount of tonnage inspected against the amount of tonnage caught in 2014. This is mainly due to the fact that the EFCA documentation refers in common terms to the species while Eurostat data further specifies this. For example, while the EFCA refers to inspection of "Cod", Eurostat catch data labels "Cods, hakes, haddocks", "Arctic cod", "Northern cods nei", etc. The same counts for "Herring" which Eurostat data labels in clusters such as "Herrings, sardines, anchovies", "Herrings, Sardines, nei - Clupeidae", "Atlantic herring", etc. This complicates efforts to draw conclusions on whether certain species are more impacted than others. However, new EU rules on discarding and landing obligations⁴⁷ might have effect on the way the PPS will be impacting working conditions. Feedback received from interviews highlights the new obligation as a risk area for incompliance. In other words, some species that are vulnerable to by-catch and discard practices could be more impacted by the PPS than others. In more practical terms this could relate to fish subject to catch limits and fish subject to minimum sizes. Some of the species noted in relation to this are those covered by multi-annual plans: cod, Northern hake, Southern Hake, Norway lobsters, sole, plaice, eel, herring, halibut and Bluefin tuna.

⁴⁷ EUROPEAN COMMISSION (n.d.). Discarding and the landing obligation [WWW]. Available from: http://ec.europa.eu/fisheries/cfp/fishing_rules/discards/index_en.htm [Accessed on 10/01/2016].

3.3. Transparency

KEY FINDINGS

- The transparency of the use of the penalty point system is weak and an area for concern.
- Civil society stakeholders consulted for this study argue that lack of access to information obstructs effective public scrutiny of compliance with fisheries regulations.
- EU regulations on the penalty point system did not include transparency as a principle from the start. As a consequence ensuring transparency afterwards is challenging.
- Most EU Member States have assigned penalty points, however, the European Commission has identified various countries that are experiencing problems with implementation.
- Detailed information on the internal working of the penalty point system requires more in-depth qualitative research in combination with better access to quantitative data on the implementation of the system.
- Available data shows that the system for masters of vessels differs for Member States. This, *de facto*, implies that harmonisation objectives will not be met.

3.3.1. Transparency on state-of-play

Overall, the transparency of the use of the PPS is weak and an area of concern. There is no public central database available where information is collected from MS on the application of the system. Some MS notify on their respective websites that a system is in place and provide information for stakeholders to better understand how this is being implemented. However, this does not necessarily include detailed information on the points assigned, under which conditions, and to whom. As a result, collecting such data requires adequate time and resources. Civil society stakeholders interviewed for this study highlighted that lack of access to information obstructs effective public scrutiny of compliance with fisheries regulations. In general, it is argued that the EU regulations on the PPS did not include transparency as a principle from the start. As a consequence, ensuring transparency afterwards is challenging.

MS have introduced the system at different speeds. Collecting information from different sources shows that currently, penalty points have been assigned for serious infringements in France, Spain, the Netherlands, Denmark, Ireland, the United Kingdom, Bulgaria, Italy and Cyprus. According to feedback from the EC, several MS are experiencing problems with the requirements concerning the implementation of the PPS (detailed information is not available due to possible EU infringement proceedings).

3.3.2. Transparency on workings

Concerning the internal working of the system, multiple questions remain open. For example, it is not clear who has access to the national database of infringements and whether the information is monitored on a daily basis or on a case-to-case basis. In addition, can infringement data be linked to other data sets, such as those concerning subsidy schemes? After all, such information could be relevant in case authorities would like to avoid that vessels with penalty points also receive public funding.

Box 6: France fines German-registered vessel owned by the Dutch**France fines German-registered vessel owned by the Dutch**

In December 2012, France imposed a fine of EUR 595,000 on the German-registered vessel Maartje Theadora, owned by the Dutch company Parlevliet & Van Der Plas, for carrying EUR 1.2 million of illegally caught fish in its freezers. According to media reports, this is the largest fine ever imposed for illegal fishing in the EU. The owners of the vessel were found guilty of using an unauthorised second gear, with unauthorised mesh size, of falsifying the logbooks and having overfished an estimate 1,500 tons.

When coupling the infringements to the PPS, the vessel should have received penalty points. The use of prohibited or non-compliant gear adds up to four points while not fulfilling reporting obligation could lead to three points. Feedback received for this study from Greenpeace highlights that it is unclear whether German authorities assigned points to the licence. The NGO contacted the German authorities and was met with administrative silence. Supposedly information was not shared on the issue due to privacy regulations. The case points towards a transparency gap in the implementation of the PPS while at the same time highlighting the complexity of enforcing fisheries legislation when dealing with different coastal and flag states in combination with complex ownership structures.

Source: http://www.lemonde.fr/planete/article/2012/12/19/le-chalutier-geant-allemand-arrete-a-cherbourg-ecope-d-une-amende-record_1808176_3244.html

Feedback collected also highlights various areas that require additional clarification. First and foremost, it is not clear how MS have introduced the PPS for masters of vessels. More clarity is expected on this once the EC publishes findings from their review on the implementation. However, at this stage it is clear that there are differences in the way the PPS will be applied for masters of vessels. Arguably this is *de facto* an area in which the objective of harmonisation will not be met. The main argument to allow for flexibility is due to the fact that sanctions in the case of masters of vessels have direct effect on a type of profession. Nevertheless, questions remain as to how to deal with risks of double jeopardy, meaning how to deal with those violators that are licence owner and master at the same time. Another open question relates to the fact that it is unclear what happens in case vessels are sold. What happens with points when a licence' capacity is split upon sale?

3.4. Country Data

This section presents data collected through desk research, interviews and surveys per Member State.

3.4.1. Overview Member State fisheries legislation

This section presents an overview of EU MS fisheries legislation relating to compliance, enforcement, offences and penalties. Whenever available, the table specifically refers to legislation concerning the PPS. The table updates information from the 2014 briefing note and primarily originates from the online database FAOLEX and FISHLex.⁴⁸

⁴⁸ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (2013) *Fishlex* [WWW]. Available from: <http://faolex.fao.org/fishery/index.htm> [Accessed 10/01/2016].
FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (2013) *Faolex* [WWW]. Available from: <http://faolex.fao.org/faolex/index.htm> [Accessed 10/01/2016].

Table 5: overview fisheries legislation

Fisheries law in each Member State	
EU Member State⁴⁹	Basic fisheries legislation
Belgium	The Decision of 14 December 2013 introduces the PPS for sea fisheries (<i>Besluit van de Vlaamse Regering houdende de invoering van een puntensysteem voor ernstige inbreuken in de zeevisserij</i> ⁵⁰).
Bulgaria	The main piece of legislation is the Fish Husbandry Act 1982, implemented by Executive Order No. I-275 establishing the fishing regime in the Country's waters and the Regulation on amounts of compensation for harms caused to the fishing industry (adopted by Degree No. 202 of 1994).
Croatia	The main piece of legislation concerning fisheries in Croatia is the Marine Fisheries Act (OG 56/10, 127/10, 55/11).
Denmark	The Danish Fisheries Act No. 372 of 2006 is the most important piece of legislation. Penalties are not stipulated by law. Order No. 1058 on allocation of credits to fishing license holders and to fishing vessel operators with regard to illegal fishery (13 November 2012) sets the guidelines for the application of the PPS. The Order implements the Fish Farming Act (No. 978 of 2008).
Estonia	Estonian fisheries are regulated through the Fisheries Act as amended, which was adapted in its first version on 27 September 1995, and the Fisheries Regulation.
Finland	The Finnish Act relative to the carrying into effect of the common fisheries policy of the European Community (No. 1139 of 1994) appoints the Ministry of Agriculture and Forestry as the coordinating authority. Local level supervision is carried out by the Rural Activities District Offices. It also defines penalties and offences. Supervision and control is defined by the Fisheries Act of April 1982. The Fishing Decree includes detailed provisions on fishing gear and the practice of fishing. It also includes details on fishing districts, State's fishing waters and fisheries control.
France	Decree No. 2014-54 of 24 January 2014 defines serious fisheries infringements and established the PPS. Decree of 3 November 2011 creates the national infringement register.
Germany	Sea fisheries are regulated through the Maritime Fisheries Law (<i>Seefischereigesetz</i>). and introduces the PPS.
Ireland	The Sea-Fisheries (Community Control System) Regulation 2012 (S.I. No. 320 of 2012) implements the Control Regulation. It also appoints the Sea Fisheries Protection Authority. Regulation 2014 S.I. No. 3 of 2014 establishes the PPS.

⁴⁹ Insufficient information is available from Cyprus, Greece and Latvia. Therefore these countries are not included in the list.

⁵⁰ E-JUSTICE (n.d.). *Besluit van de Vlaamse Regering houdende de invoering van een puntensysteem voor ernstige inbreuken in de zeevisserij* [WWW]. Available from: http://www.ejustice.just.fgov.be/doc/rech_n.htm [Accessed on 10/10/2015].

Italy	Legislative Decree No. 4 rearranging the national legislation on fisheries and aquaculture of 9 January 2012 implements the IUU regulation repeals Act No. 381 amending Act of 14 July 1965, No. 963, regulating sea fishing which deals with penalties and offences in case of violations. Decree of 29 February 2012 sets modalities, terms and procedures for implementing the points system for fishing licence in case of serious offences (<i>Decreto 29 febbraio 2012: Modalita', termini e procedure per l'applicazione del sistema di punti per infrazioni gravi alla licenza di pesca</i>).
Lithuania	The Lithuanian Law on Fisheries (No. VIII-1756) of 27 June 2000 deals with monitoring and non-compliance. It also defines competences for the Ministry of Agriculture, Ministry of Environment and the Fisheries Board.
Malta	The Maltese Fisheries Conservation and Management Act, 2001 (No. II of 2001) deals with all fishing and aquaculture, including enforcement, prohibitions and offences. Also court proceedings, administrative proceedings and penalties are prescribed. Fishing Vessels Regulations 2004 (L.N. 407) set out the rules governing the licensing and registration of fishing vessels.
Netherlands	<p>The Fisheries Act 1963 provides the basis for Dutch fisheries regulations. The Act contains authorisation of secondary legislative competencies as well as directly applicable provisions. The Minister of Economic Affairs is responsible for the execution of the fisheries policy.</p> <p>The Act deals with all aspects of fisheries and fish conservation. It includes provisions for registration of fishing vessels, sea and coastal fisheries, and provides a framework for further regulation of inland fisheries. Besides, it serves as the legal basis for executing the international legal obligations of the country. The Act also provides for the authorisation of secondary legislative competencies to be exercised by Royal Decree. This allows the relevant authorities, in this case the ministries, to adopt general administrative orders (<i>algemene maatregel van bestuur</i>) within the scope of the Fisheries Act. Further, the final chapter of the Act includes penal provisions including the possibility for administrative measures such as a fishing prohibition in light of public health standards.</p>
Poland	The Polish Law on Fisheries (<i>Dz.U. No. 34, item 145</i>) of 18 January 1996 prescribes offences and penalties. The law also stipulates the competences of the Ministry of Transport and Maritime Economy in determining fishing effort, etc. The Regulation on pecuniary penalties for breaches of provisional of fishery implements Fishery Act (6 May 2005) and established a range of penalties for breaches specified in paragraph 63 of the Fishery Act.
Portugal	The Portuguese Fisheries Act (<i>Decreto-Lei No. 278/87</i>) established the legal framework governing fishing and marine culture activities in Portuguese territorial waters and has been amended by Decree-Law No. 383/98 amending Decree-Law No. 278/87 of 27 November 1998. The most important secondary legislation based on the Fisheries Act is <i>Decreto Regulamentar No. 43/87</i> .
Romania	The Act concerning the Legal Regime of the Internal Waters, the Territorial Sea and the Contiguous Zone of Romania (7 August 1990) deals with fishery management, conservation and offences/penalties.

Slovenia	The main piece of legislation in Slovenia is the Marine Fisheries Act (<i>ZMR-2</i>) of 27 October 2006. The Act deals with the fishing vessel register, powers of inspectors, tasks of police and the tasks of the ministry responsible for maritime affairs. It also deals with offences and violations. The Decree of 4 October 2012 on the system to prevent, deter and eliminate illegal, unreported and unregulated fishing transposes Council Regulation (EC) No. 1005/2008.
Spain	The Spanish Fisheries Act (<i>Ley N° 3/2001 - Ley de pesca marítima del Estado</i>) deals with sea fisheries and establishes exclusive competence at central governmental level. Royal Decree No. 114/2013 deals with the national register of serious infringements of the CFP. It also establishes the norms needed for the application of the PPS as well as the updated the sanctions foreseen in the Fisheries Act. Royal Decree No 182/2015 (<i>Reglamento de procedimiento del régimen sancionador en materia de pesca marítima en aguas exteriores</i>) sets the sanctioning procedure in case of infringements and includes reference to the PPS.
Sweden	The Swedish Fisheries Act (<i>Fiskelag 1993:787 as amended</i>) is the country's most important piece of legislation. It grants the government secondary legislative powers in order to implement fisheries regulations. Decree (1994:1716) relative to fishing, use waters and fish culture amends the Fisheries Act and lays down rules for fishing in the Swedish territorial sea.
United Kingdom	<p>A complete list of UK fisheries legislation is maintained by the MMO in the form of the Blue Book.⁵¹</p> <p>Sea Fishing Regulations 2014 (S.I. No. 3345 of 2014 and SI. No. 379 of 2014) set up the PPS for masters of vessels in England, Wales, Northern Ireland and Scotland. This applies to British nationals that have committed serious infringements. Suspension periods and disqualifications shall be notified to the MMO who will have a UK-wide register of masters that have been allocated points. These regulations make is also an offence for persons to employ a disqualified or suspended master of a UK fishing boat.</p>

3.4.2. Overview Member State PPS

This section provides additional insight into the operation of the PPS for various EU MS.⁵² When available, data from the 2014 briefing note is complemented and/or updated. The following table presents an overview of the EU MS that have the PPS in place and whether they have already assigned points.⁵³

⁵¹ MMO (2015). Fishing regulation: The Blue Book [WWW]. Available from: http://www.marinemanagement.org.uk/fisheries/monitoring/regulations_bluebook.htm [Accessed on 01/11/2015].
Legislation.GOV.UK (n.d.). [WWW]. <http://www.legislation.gov.uk/ukxi?title=sea%20fishing%20enforcement%20of%20community%20conservation%20measures> [Accessed on 01/11/2015].

⁵² Insufficient information is available for Portugal, Romania, Slovenia and Sweden. Therefore these countries are not included in the overview.

⁵³ Please note that the information presented is based on a combination of desk research, interviews, survey work and some specific data requests to national authority. When it states 'not confirmed' it means that our data collection was not conclusive on whether the PPS is in place or is being applied.

Table 6: overview PPS in MS

EU MS	PPS in place	PPS assigned
Bulgaria	yes	yes
Cyprus	yes	yes
Denmark	yes	yes
Ireland	yes	yes
Italy	yes	yes
Netherlands	yes	yes
Spain	yes	yes
United Kingdom	yes	yes
Croatia	no	no
Belgium	yes	not confirmed
Estonia	yes	not confirmed
Finland	not confirmed	not confirmed
France	yes	not confirmed
Germany	yes	not confirmed
Greece	not confirmed	not confirmed
Latvia	not confirmed	not confirmed
Lithuania	not confirmed	not confirmed
Malta	not confirmed	not confirmed
Poland	yes	not confirmed

3.4.2.1. Belgium

Belgium has regionalized the competence of fisheries, which in practice means that this is dealt with by the Flemish authorities. Control is handled by the Flemish Sea Fisheries Service (*Dienst Zeevisserij*). Data on fisheries infringements was presented in the 2014 briefing note based on information provided by the Minister at the time to the Flemish Parliament. For this current study no updated information was identified on the online database of the Flemish Parliament. In addition, no information was provided for this current study through the survey. Therefore, the information presented below primarily originates from online desk research.

Based on the information of the 2014 briefing note we know that Belgium imposes financial penalties based on calculations of the economic gain from the infringement. In addition, it is common to issue verbal or written warnings and settle cases. This can also include the confiscation of catch. No imprisonment is imposed for fisheries infringements.

The Fish Husbandry Act of 1982 is implemented by Executive Order No. I-275 and establishes the fishing regime in the Country's waters and the Regulation on amounts of compensation for harms caused to the fishing industry (adopted by Degree No. 202 of

1994). The Official State Bulletin of 23 January 2013 introduces the PPS (*B.S. 23.01.2013*)⁵⁴ based on the decision of the Flemish Government concerning the introduction of the PPS in sea fisheries (*Besluit van de Vlaamse Regering houdende de invoering van een puntensysteem voor ernstige inbreuken in de zeevisserij, 14 December 2013*).⁵⁵

The website of the Flemish Sea Fisheries Service does not provide detailed information on the application of the PPS except for the notification that the system for masters has to be included in collaboration with the federal transport services (*FOD Mobiliteit*).⁵⁶

3.4.2.2. Bulgaria

Feedback received from Bulgaria through the 2015 survey shows that the country introduced the PPS in 2012 by amending the Fisheries and Aquacultures Act (3/8/2012). It has been fully operational since February 2013 after the publication of the implementing rules. At this stage, penalty points have been assigned since the beginning of 2015. The Executive Agency for Fisheries and Aquacultures is responsible for inspection, sanctioning and the PPS, in collaboration with the Border Police, Bulgarian Food Safety Agency and Maritime administrative Agency. Points can be assigned after the detection and issuing of the penalty provision and only to the holder of the fishing licence. The most frequent serious infringements in Bulgaria are:

- fishing without a valid licence, authorisation or permit;
- not fulfilling its obligations to record and report catch or catch-related data;
- taking on board, transshipping or landing undersized fish.

3.4.2.3. Croatia

In Croatia the PPS has not yet been put in place. It will be operational once the national ordinance will be approved by the EC. The executive authority responsible for inspection and the PPS is the Ministry of Agriculture. Together with the Magistrate Court they will be responsible for sanctioning.

Upon detection of an infringement, an inspection report will be issued and decision will be made on the penalty. This could be a misdemeanour warrant or an indictment. Points can be assigned after judgment or after payment of the misdemeanour warrant. Points can be assigned to both holders of licenses as well as masters of vessels.

The most common serious infringements in Croatia are:

- fishing without a valid licence, authorisation or permit;
- fishing in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth;
- taking on board, transshipping or landing undersized fish.

According to data received through the survey for this study, Croatia detected more than 50 infringements in 2014. Data is not made public and only available to authorities through the official register of infringements. Croatian authorities can impose monetary sanctions and confiscate catch, equipment or gear. No imprisonment can be imposed.

⁵⁴ DEPARTMENT LANDBOUW & VISSERIJ (n.d.). Aanvullende quotamaatregelen vanaf 1 februari 2013 [WWW]. Available from: <http://lv.vlaanderen.be/nl/nieuws/aanvullende-quotamaatregelen-vanaf-1-februari-2013> [Accessed on 10/11/2015].

⁵⁵ E-JUSTICE (n.d.). Besluit van de Vlaamse Regering houdende de invoering van een puntensysteem voor ernstige inbreuken in de zeevisserij [WWW]. Available from: http://www.ejustice.just.fgov.be/doc/rech_n.htm [Accessed on 10/10/2015].

⁵⁶ DEPARTMENT LANDBOUW & VISSERIJ (n.d.). Aanvullende quotamaatregelen vanaf 1 februari 2013 [WWW]. Available from: <http://lv.vlaanderen.be/nl/nieuws/aanvullende-quotamaatregelen-vanaf-1-februari-2013> [Accessed on 10/11/2015].

Table 7: infringements in Croatia

Croatia: Infringements 2007-2012					
2007	2008	2009	2010	2011	2012
38	47	59	64	83	88

Source: survey 2014 briefing note

3.4.2.4. Cyprus

Cyprus introduced the PPS in 2012 and one year later it was fully operational. At this stage, points have been assigned to violators by the Department of Fisheries and Marine Research (DFMR).⁵⁷ Apart from the PPS, the DFMR is also responsible for the inspection and sanctioning of fisheries infringements.

Once an infringement is detected, a notice is issued and the case information forwarded within two months to the Director of the DFMR. At that moment the decision is taken on the amount of points. The violator will have 10 working days to object to the Minister of Agriculture. The Minister has 30 days to decide on the objection. After this a final decision has to be taken on the assigned points. Points can be assigned to both licence holders and masters of fishing vessels.

The most common serious infringements in Cyprus are:

- not fulfilling obligations to record and report catch or catch-related data;
- use of prohibited or non-compliant gear;
- obstruction of work of officials in the exercise of their duties in inspecting for compliance.

Apart from penalty points, Cypriot authorities can impose monetary sanctions and confiscate catch and gear. In addition, the law allows for imposing imprisonment.

3.4.2.5. Denmark

Denmark introduced the PPS on 1 December 2012. The Danish AgriFish Agency is responsible for the inspection of fisheries and can take administrative action. The Danish courts are responsible for criminal prosecution.⁵⁸

The PPS falls under the responsibility of the Danish AgriFish Agency. Upon detection of an infringement, an inspection report is issued and the concerned parties are consulted. In case of action under criminal procedure, the public prosecutor (the police) is informed and will pursue the case in court. In case of administrative action, the Danish AgriFish Agency will take a decision and notify the violator. Points can be assigned after the case has been forwarded to the public prosecutor for cases under criminal procedure. For cases settled administratively, the Agency assigns points after four weeks from the date of the administrative decision. Both the holder of the fishing license and the master of the vessel can be assigned points.

The most common serious infringements detected in Denmark are:

- not fulfilling obligations to record and report catch or catch-related data;
- use of prohibited or non-compliant gear;
- taking on board, transshipping or landing undersized fish.

⁵⁷ MINISTRY OF AGRICULTURE, RURAL DEVELOPMENT AND ENVIRONMENT (n.d.). Sectors –Agriculture – Fisheries – Department of Fisheries and Marine Research [WWW]. Available from: <http://www.moa.gov.cy/moa/Agriculture.nsf/All/4EED856335052962C22578B1003E84AE?OpenDocument> [Accessed on 10/01/2015].

⁵⁸ AGRIFISH (n.d.). [WWW]. Available from: <http://agrifish.dk/> [Accessed on 10/01/2016].

Data collected through the survey shows that in 2013 and 2014, penalty points were assigned.

Table 8: serious infringements in Denmark

Denmark: Serious infringements 2007-2014							
2007	2008	2009	2010	2011	2012	2013	2014
20	27	24	32	18	31	22	7

According to Denmark, discrepancies in national implementation can best be addressed by increasing transparency on how the system is applied in each MS. *'This is especially true for assessing the graveness of each serious infringement'*. The country supports the active role of the flag state in improving transparency but acknowledges that the EC could play a useful role by facilitating and giving guidance on how to do this.

3.4.2.6. Estonia

Estonian fisheries are regulated through the Fisheries Act as amended, which was adapted in its first version on 27 September 1995, and the Fisheries Regulation. The fisheries sector is divided between the Ministry of Agriculture and the Ministry of Environment. Within the Ministry of Environment, the Estonian Environmental Inspectorate (EEI) has the overall responsibility for fisheries control. The Fisheries Protection Department, as part of the EEI, carries out control activities in cooperation with the Estonian Coast Guard and the Ministry of Agriculture. The latter deals with administering fishing permits and maintaining records on fishing.

The authorities present on their website a reference document on the introduction of the PPS including information on work division of control of fisheries.⁵⁹ Further, data from 2014 is presented from the EEI that states that 629 procedures were initiated for violations of the Fisheries Act. 996 cases of undetermined ownership of gear were detected. A total of 535 persons were fined for a total of EUR 62 289. A total of 102 cases of environmental damage related to the Fisheries Act, which constituted to EUR 84 137 in damage.⁶⁰ Data from 2010 and 2011 has been documented differently and therefore cannot be presented in a comparative way.

Data from 2014 further states that 35 criminal proceedings were commenced of which 10 concerning fishing. Overall, seven persons were punished of which three for fisheries cases. No similar data has been found from previous years.

Data for this report was found through online desk research. Data from the previous report was collected through survey/data request means and could therefore not be updated.

The data sheets consulted for the 2015 study do not include information on penalty points.

3.4.2.7. Finland

A screening of the fisheries' authority website in English provides some information on the control system.⁶¹ The Fishing Decree includes detailed provisions on fishing gear and the practice of fishing. It also includes details on fishing districts, State's fishing waters and fisheries control. The website states that commercial fishing at sea is controlled by the Southwest Finland Centre for Economic Development, Transport and the Environment (EYL Centre), the Provincial Government of Åland and the Finnish Border Guard. The EYL Centre

⁵⁹ ENVIRONMENTAL INSPECTORATE (n.d.). [WWW]. Available from: <http://www.kki.ee/eng/> [Accessed on 10/09/2015].

⁶⁰ ENVIRONMENTAL INSPECTORATE (2014). Kokku KKI maakonniti ja valdkonniti [WWW]. https://www.kki.ee/download/541/2014_kokku_KKI_maakonniti_ja_valdkonniti.xls [Accessed on 10/09/2015].

⁶¹ MMM (n.d.). [WWW]. Available from: <http://mmm.fi/etusivu> [Accessed on 10/01/2016].

and the Provincial Government of Åland control landings and first-hand trade of fish. The border guard operates the Fisheries Monitoring Centre. It is unclear from the website whether the country applies the PPS.

3.4.2.8. France

Since January 24, 2014, France put in place the '*permis de pêche à points*'. The French control system is decentralised. Control efforts at sea are the responsibility of various authorities: police, customs, Gendarmerie, the French navy and maritime affairs. Points are assigned by interregional directorates called '*Directeur interrégional de la mer*' (DIRM). There are four DIRM in metropolitan France and four located in the French overseas territories. The DIRM are coordinated at the national level by the National Surveillance centre for maritime fishing (*Centre National de Surveillance des pêches maritimes*).

In 2014, in metropolitan France, 5,252 inspections took place (2,734 air-sea and 2,518 ashore).⁶² 13% of the inspections revealed infringements. From the reporting it is unclear whether all those infringements led to the assignment of points. Most controls were carried out by maritime affairs in 2014.

France has adopted a similar system for masters of vessels but has added an additional threshold. The suspension thresholds in France are the following:

Table 9: penalty point system scheme in France

Offender	Points vessel	Fishing licence	Points master	Fishing licence
First time	18	2 months suspension	18	1 month suspension
Second time	36	4 months suspension	36	2 months suspension
Third time	54	8 months suspension	54	4 months suspension
Fourth time	72	1 year suspension	63	8 months suspension
Fifth time	90	Permanent suspension	72	1 year suspension
			90	Permanent suspension

Source: Ministère de l'écologie, du développement durable et de l'énergie

3.4.2.9. Germany

Federal tasks on fisheries control are delegated to the Federal Office of Agriculture and Food (*Bundesanstalt für Landwirtschaft und Ernährung*). This body can carry out monitoring and control actions. Administrative agreements are concluded with the Federal Ministry of Finance and the Federal Ministry of Interior on respectively customs and border patrol issues.

Sea fisheries are regulated through the Maritime Fisheries Law (*Seefischereigesetz*). Article 13 introduces the penalty point system. It applies to holders of fishing licences as well as the master of a vessel. For the master of the vessel, a two months suspension can be imposed once 18 points have been accumulated. The next 18 points will cause four months suspension followed by eight months and maximum one year. In case the offender

⁶² CROSSA (2014). Bilan d'activités crossaetel [WWW]. Available from: http://www.dirm.nord-atlantique-manche-ouest.developpement-durable.gouv.fr/IMG/pdf/BILAN_2014_CROSS_ETEL_1_cle52d943.pdf [Accessed on 10/01/2016].

accumulates for a fifth time 18 points, the authorities can confiscate the certificate for an undefined period of time. Suspension of the certificate of the master of the vessel is ordered by the Federal Maritime and Hydrographic Agency. The captain has to hand over the certificate to the authorities immediately. Issuing or re-issuing of certificates for services on fishing vessels are not permitted during the period of suspension. However, this is permitted for other vessels such as merchant vessels. Points will be deleted upon expiration of the suspension. However, in case offender repeat infringements during the period of suspension, the period will be extended by a month for each point assigned.⁶³ Good behaviour of masters of vessels can result in points deducted. After an extended period of time all points can be cancelled.

The authorities collect data on violations of the CFP. This is stored for cases committed by German nationals, cases with vessels flying the German flag, and cases within the EEZ. All sanctioning authorities (i.e. courts and public prosecutors) are to register data up to three or five years. The authorities collect, *inter alia*, the following data:

- personal details;
- nationality;
- information on the certificates;
- information on the certificates from other MS;
- information on the fishing licences;
- type, date and place of the serious infringement;
- vessel identification data;
- final sanction;
- points allocated;
- additional information on the points;
- final decision on withdrawal or suspension of licence and certificates.

The website of the *Bundesanstalt* provides introductory information on fisheries control, including the regulation. Contact names are provided for civil servants dealing with control. The website also includes links to the public and secure websites established in accordance with Article 115 and 116 of the Control Regulation.⁶⁴ The public website states the responsible authority and lists information concerning designated ports, closed fishing areas, contact points for documentation requirements, etc.⁶⁵

No data on the implementation has been found on the website but some information was received through the survey/interview request. According to the feedback received, between January 2012 and November 2015, 471 CFP violations were detected. Most of these concerned logbook violations (178 violations), quota violations (109 violations), and landing declarations (80 violations). In eight cases the German authorities determined that serious infringements were proven. In seven instances, three points were awarded for non-fulfilment of the obligation relating record and catch data. In one instance, seven points were assigned for sea fishing without a fishing permit.

⁶³ BUNDESMINISTERIUM DER JUSTIZ UND FÜR VERBRAUCHERSCHUTZ (n.d.). Gesetz Regelung der Seefischerei [WWW]. Available from: http://www.gesetze-im-internet.de/seefischg/_13.html [Accessed on 10/01/2016].

⁶⁴ BUNDERANSTALT FÜR LANDWIRTSCHAFT UND ERNÄHRUNG (n.d.). Fischereikontrollverordnung [WWW]. Available from: http://www.ble.de/DE/02_Kontrolle/02_Fischerei/06_Fischereikontrolle/01_Fischereikontrollverordnung/fischereikontrollverordnung_node.html;jsessionid=997608ADD5D82556AB0941ADFB3D260F.1_cid325 [Accessed on 10/10/2015].

⁶⁵ BUNDERANSTALT FÜR LANDWIRTSCHAFT UND ERNÄHRUNG (n.d.). Informationen gemäss Artikel 115 de Kontrollverordnung []. Available from: http://www.ble.de/DE/02_Kontrolle/02_Fischerei/06_Fischereikontrolle/01_Fischereikontrollverordnung/fischereikontrollverordnung_oeffentlicher_Teil.html;jsessionid=997608ADD5D82556AB0941ADFB3D260F.1_cid325?n=4534536 [Accessed on 10/10/2015].

3.4.2.10. Greece

In Greece, the Port Police, Section C (Fisheries - CFP), as part of the Ministry of Mercantile Marine Shipping deals with control. The Ministry of Agriculture deals with all political and policy issues relating fisheries. Within the Ministry, the General Directorate of Fisheries has departments in all regions. Its control efforts are limited to the market place when dealing with the size of fish, protected species and fish quality.

The Hellenic Coast Guard monitors and controls fishery under the responsibility of the Ministry of Mercantile Marine Shipping at sea. Local entities manage the daily register and licencing activities. On land, the coast guard also checks catch legislation documentation. The Hellenic Coast Guard⁶⁶ published on their website statistics on violations identified and fines imposed.⁶⁷ The data also includes days removed from fishing licenses.

For this study, to date no data has been received through the survey and available data online cannot be properly analysed due to the fact this is provided in Greek.

3.4.2.11. Ireland

In Ireland sea fisheries management is the responsibility of the Ministry. Control is the responsibility of the Sea Fisheries Protection Authority (SFPA) in cooperation with Irish Defence Forces of the Naval Service and Air corps (together they run the National Fisheries Monitoring Centre).⁶⁸ The SFPA is the independent law enforcement agency and falls under the Sea-Fisheries and Maritime Jurisdiction Act 2006. The SFPA establishes an annual Fisheries Control Plan.

Ireland uses criminal justice to prosecute fishery offences. The 2006 Act establishes fishery offences as indictable and to be heard in Circuit Court. In some circumstances these offences may be tried summarily in the District Court. Since 2005 there have been calls for use of administrative sanctions. This was discarded due to legal concerns and the premise this might be unconstitutional. On the spot penalties (fines) are considered a possibility under the EU requirements to use effective, proportionate and dissuasive sanctions. This would apply to minor offences considering that serious offences can only be sanctioned to criminal prosecution and therefore through the Courts. To do so, minor offences need to be clearly set out in legislation and clearly distinguished as such. A fisherman can receive a fixed penalty notice and choose to pay in order to avoid criminal prosecution, which, if successful, can lead to a criminal record.

Ireland implemented the PPS for license holders in SI No. 3 of 2014. The procedures are clearly established in the policies and procedures. The system applying to masters of fishing vessels is not specified and therefore needs to be defined on the national level and introduced by way of primary legislation. MS often have simply copied the system for license holders to masters of vessels. This is possible because they issue licenses to masters of vessels. In Ireland there is no such thing. However, there is a Certificate of Competency issued by the Department of Transport, Tourism and Sport that only applies to a small proportion of the larger vessels but is not specific to fishing vessels.

The Irish Department of Agriculture, Food and the Marine launched in 2014 a public consultation as part of an impact assessment of the provisions relating fixed penalties for

⁶⁶ HCG (n.d.). Home [WWW]. Available from: <http://www.hcg.gr/> [Accessed on 10/01/2016].

⁶⁷ HCG (n.d.). Statistics [WWW]. Available from: <http://www.hcg.gr/alieia/statistika/statistika.php> [Accessed on 10/01/2016].

⁶⁸ SFPA (n.d.). Home [WWW]. Available from: <http://www.sfpa.ie/> [Accessed on 10/01/2016].

minor offences and a PPS for masters of fishing vessels for serious offences.⁶⁹ In short, there are three options for the point system for masters of vessels: purely administrative system as for license holders; a system depending on conviction in order to assign points; and a hybrid system whereby the person has the option of resolving matters either in an administrative process or choosing to have the matter heard in court.

The public consultation resulted in 11 responses. The PPS received significant criticism from the different respondents. The fisheries producers strongly criticised the way the system was rolled out. Main concerns voiced by the organisations relate to the concept of double jeopardy, but also the right to property and to earn a living. Apart from this, the industry representatives also criticise the workings of the system and in particular the methods used to appeal decisions. For example, it is argued that the appeal procedure is not independent when an appeals officer is appointed by the SFPA. They argue that the SFPA is not held accountable and is carrying out the investigation, identification and sanctioning. The same transparency and accountability concerns are expressed by other respondents. In addition, one respondent highlights the important to have a code of standards with regard to inspections and the way these are to be carried out.

3.4.2.12. Italy

In Italy, the Ministry of Agriculture, Fisheries Directorate, is responsible for fisheries. Other Ministries involved in control activities are: the Ministry of Defence with the Coast Guard, the Navy and the Carabinieri; the Ministry of Interior with the national police; the Ministry of Finance with the special finance police; and the Ministry of Social Affairs dealing with veterinary activities. The national harbour (*Comando Generale delle Capitanerie di Porto*) and coastal administration deal with fisheries control on the local and regional level under the authority of the Ministry of Agriculture.

On the website of the Ministry data is presented on fisheries control.⁷⁰ The data shows that in 2014, a total of 64 259 controls have been realised. Most controls were done at landing points (30 864), followed by sea control (12 328). Inspections primarily focus on:

- Specific species;
- Fishing gear;
- Elements concerning the supply chain.

The available documentation shows that in 2014 221 violations specifically concerned tuna. Overall, in 2014 a total of 5 251 violations were detected. As a consequence, 4 244 administrative sanctions were imposed and 1 007 criminal sanctions. Administrative sanctions amount up to EUR 7 330 250. Most common violations were:

- Labelling (1917 violations);
- Hygiene (564 violations);
- Illegal fishing (551 violations);
- Recreational / sport fishing (458 violations);
- Red tuna (210 violations);
- Trawling (61 violations);
- Fishing under size limits (259);
- Fishing in marine protected areas (58).

⁶⁹ DEPARTMENT OF AGRICULTURE, FOOD AND THE MARINE (2014). Screening Regulatory Impact Analysis [WWW]. Available from: <https://www.agriculture.gov.ie/media/migration/customerservice/publicconsultation/RIASFMJA2014201114.pdf> [Accessed on 10/01/2016].

⁷⁰ MINISTERO DELLE POLITICHE AGRICOLE, ALIMENTARI E FORESTALI (2015). [WWW]. Available from: <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/8614> [Accessed on 10/01/2016].

The documentation does not provide any reference to the application of the penalty point system.

3.4.2.13. Latvia

The Latvia State Environmental Service (SES) falls under the Ministry of Environment and aims to ensure compliance with environmental laws and regulation. Part of this is dealing with fisheries and control. The website of the services do provide statistical data but our screening does not verify whether this included penalty point allocation.⁷¹

For this study, to-date, no information has been received through the survey and available data online cannot be properly analysed due to the limited timeframe and accessibility of data (primarily in Latvian). At this stage, a specific data request was made to the person responsible at the SES. At the time of drafting this report, the data has not yet been provided.

3.4.2.14. Lithuania

In Lithuania, the Fisheries Department, Division of Atlantic Fisheries Control and Monitoring, within the Ministry of Agriculture is responsible for fisheries. The service under the Ministry of Agriculture of the Republic of Lithuania implements laws and regulations assigned to it by the Lithuanian fisheries policy, and based on the CFP. One of its tasks is to control fisheries in the marine waters. The service handles cases of administrative offences.⁷² Screening of the website shows little statistical information.

3.4.2.15. Malta

In Malta, the Director General of Fisheries & Aquaculture is responsible for monitoring, control and surveillance of fishing operations. The Control Unit deals with following up on infringements through the Fisheries Monitoring Centre. One Senior Fisheries Protection Officer and five Fisheries Protection Officers monitor 220 vessels installed with tracking equipment. The team also monitors those vessels not equipped with tracking devices by coordinating landings and inspections. Also vessels from other MS are controlled, as well as, third country vessels. This is done in collaboration with the Armed Forces of Malta, Transport Malta, and other Coastal Member States, the EFCA and the European Commission.⁷³

There is no specific reference made on the website to the PPS. To date, no information has been received through the survey. An additional information request has been made to the authorities but at the time of writing this report, this information has not yet been provided.⁷⁴

3.4.2.16. Netherlands

The Ministry of Economic Affairs (*Ministerie van Economische Zaken*, EZ) deals with all matters relating to the Dutch economy, including food safety, agriculture and fisheries. The Ministry controls various executive agencies, such as the Netherlands Food and Consumer Product Safety Authority (*Nederlandse Voedsel- en Warenautoriteit*, NVWA).⁷⁵ This agency's main task is to control the compliance of private and public entities with laws and regulations concerning human, animal and plant health. The regulation *Uitvoeringsregeling Zeevisserij* deals with the implementation of the PPS. Points can be assigned on behalf of

⁷¹ VVD (n.d.). Statistiskas dati [WWW]. Available from: <http://www.vvd.gov.lv/publikacijas-un-statistika/statistikas-dati/> [Accessed on 10/01/2016].

⁷² ZUV (n.d.). Fisheries monitoring and control [WWW]. Available from: <http://zuv.lt/index.php?587087461> [Accessed on 10/01/2016].

⁷³ <https://agriculture.gov.mt/en/fisheries/Pages/controlunit.aspx>

⁷⁴ AGRICULTURE.GOV.MT (n.d.). Control Unit [WWW]. Available from: <https://agriculture.gov.mt/en/fisheries/Pages/contactdetails.aspx> [Accessed on 10/01/2016].

⁷⁵ NVWA (n.d.). [WWW]. Available from: <https://www.nvwa.nl/> [Accessed on 10/01/2016].

the Minister through the department *Uitvoering Visserijregelingen* (VIR) at the Ministry of Economic Affairs as soon as a serious infringement has been detected. Also, when a foreign authority has detected an infringement, the VIR will decide on allocating points. The department will take into consideration: the nature and value of the damage caused by the infringement; the economic situation of the offender; and the scale of the infringement. The system was used to enforce the Electronic Recording and Reporting System (ERS). Within this scope, the Netherlands has also allocated penalty points to fishermen.

The Dutch association of fishermen (*VisNed*) initially communicated that there was no discussion between the authorities and the industry on the introduction of the point system.⁷⁶ The association highlighted that the industry was confronted at the time with new rules concerning the E-log and the weighing obligations. For both, *VisNed* interacted with the authorities on the best ways to implement. For the weighing obligations this resulted in subsidy arrangements for vessels when installing the machines. Despite this, the industry stressed that problems were encountered with vessels equipped with scales that were not approved or approved scales without the proper exemptions to operate this on board. Consequently vessels received penalty points for relatively “simple administrative issues”. *VisNed* highlights that the PPS is there to address serious infringements and finds it problematic that points are allocated on issues that are subject to debates between the authorities and the industry on how to best implement this. The association also questions the proportionality of the fact that points remain valid for three years, including when vessels change owner. Finally, *VisNed* also highlight concerns relating the communication between the authorities and the fishermen, especially because the authorities allegedly inform fishermen by email on the allocation of points.

3.4.2.17. Norway

A relevant focus of this study is Member States with shared stocks. The EU manages shared stocks with non-EU countries. Through fisheries agreements, the fishing activities in the North Seas and northeast Atlantic are managed with Iceland, the Faeroe Islands and Norway. Stocks are jointly managed and exchanged to ensure that they are not wasted. Norway is of particular relevance given that agreements cover quotas worth over EUR 2 billion. The EU has three fisheries agreements with Norway. The bilateral arrangement covers the North Sea and the Atlantic, the trilateral covers Skagerrak and Kattegat (Denmark, Sweden and Norway), and the neighbourhood arrangement covers the Swedish fishery in Norwegian waters of the North Sea.

⁷⁶ VISNED (2013). Puntensysteem [WWW]. Available from: <http://www.visned.nl/nl/nieuws/item/id/5114/puntensysteem> [Accessed on 10/01/2016].

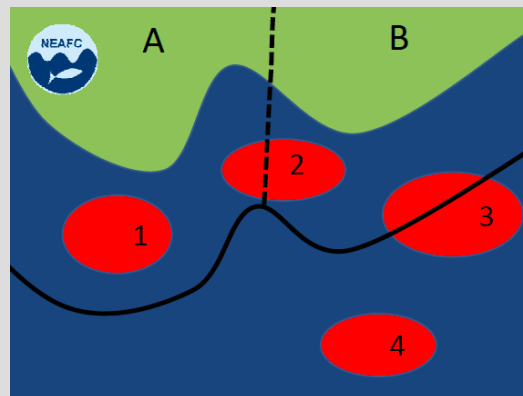
Box 7: North East Atlantic Fisheries Commission

North East Atlantic Fisheries Commission

NEAFC is a Regional Fisheries Management Organisation for the North East Atlantic which is considered one of the most abundant fishing areas in the world. The organisation adopts management measures for various fish stocks and control measures to ensure proper implementation. Contracting parties to NEAFC are Denmark, Iceland, Russia, Norway and the EU.

The relevance of international collaboration, in this case NEAFC, can be shown through the image below. It shows how shared fish stocks can be understood. According to FAO, shared stocks include fish resources (item 2) that cross exclusive economic zone (EEZ) boundaries of different countries (item A and B). Some fish resources are highly migratory stocks, which due to their nature are found both within EEZs as well as on high seas (item 3). Fish stocks to be found exclusively in high seas also are considered shared stocks (item 4).

NEAFC has various control measures in place concerning fish authorisation, notification of vessels, vessel requirements, gear specifications and labelling requirements. Monitoring is done through reporting requirements, vessel monitoring. Inspections are carried out by NEAFC inspectors, that have a set of competences to ensure evidence collected and referral to the respective flag states. Contracting parties to NEAFC are responsible for sanctioning.



Source: NEAFC, Stefan Asmundsson,

http://www.conxemar.com/v_portal/informacion/informacionver.asp?cod=3060&te=413&idage=3752

FAO, <http://www.fao.org/docrep/007/y5438e/y5438e05.htm>

The central provision in the agreements is that Norway and the EU allow fishing activity in their respective jurisdictions. Annual quota agreements are made to regulate fishing operations. The cooperation also addresses control and enforcement. Norway maintains close collaboration with the EC when it comes down to IUU fishing. Given that the implementation of control measures is a national competence, Norway has also established contacts with MS bilaterally. This includes close collaboration with Denmark and the UK, but also agreements have been made with Sweden, Lithuania, Poland, Germany, Netherlands, France, Spain and Ireland.

Norway shares the vision of the EU to develop a single fisheries policy. The future of the CFP is relevant to the country given it shares challenges with the EC. Both could learn from one another and compliance is an area in which both the EU and Norway share similar views. In a commentary paper by the Norwegian government it is highlighted that despite a

general culture of compliance, the industry is suffering from increasing productivity/efficiency, strong competition and low prices which together puts pressure on traditional norms of good fishing practice. The government therefore deploys fishing inspectors to address possible non-compliance. In addition, compliance is facilitated by:⁷⁷

- *'initiating close cooperation between industry and government agencies to discuss and implement ethical standards for the fishing industry;*
- *publicly challenging the view that "all is well" in the industry;*
- *establishing an "alert phone" in the Fisheries Monitoring Center in the Directorate of Fisheries, where citizens may inform the Directorate of possible infringements in their local communities;*
- *creating dialogue between fisheries inspectors and fishermen in order to inform the fishermen of the details of the regulations. This is also an important input to the government in terms of assessing the effectiveness of regulations. Regulations must be consistent, simple and as logical as possible in order to have legitimacy in the industry.'*

The Norwegian government highlights that it is difficult to evaluate the effect of control measures. However, measures should also include incentives to comply with the rules. At the same time, feedback from a Norwegian official highlights that the sanctioning system should ensure that violations are sufficiently penalized. In practice this translates primarily to fines. The fines are imposed based on the vessel, gear and catch value. It is ensured that fines prevent profit from violations while at the same time avoid players to go out-of-business. The Norwegian Coast Guard performs yearly more than 1 800 inspections of vessels in national waters. The Directorate of Fisheries controls activities on the fishing grounds. Serious infringements can be referred to court.

The Coast Guard has law enforcement competences which allow them to secure evidence on board and if needed bring vessels back to shore. In practice this is done in the case of foreign vessels in order to avoid that evidence is destroyed or vessels leave Norway. National vessels and vessels from Nordic countries are written up and in most cases allowed to continue fishing. Inspectors can either issue a verbal or written warning. When two written warnings are issued, cases are referred to the police for further investigation and prosecution. In case of infringements by foreign vessels, fines are imposed. Subsequently the Norwegian Ministry of Foreign Affairs is notified and they will inform the flag state. Norway avoids impunity by always prosecuting vessels no matter whether they are flying Norwegian or foreign flags. The Norwegian official interviewed for this study points out that a zero tolerance approach is adopted, meaning that as a starting point, vessels are responsible for their own compliance. This means that in principle no error margins are allowed for vessels when having to comply with rules, e.g. by-catch or reporting requirements.

3.4.2.18. Spain

The General Secretariat of Fisheries (*Secretaría General de Pesca Marítima*) is responsible for control, under the responsibility of the Ministry of Agriculture, Food and Environment (*Ministerio de Agricultura, Alimentación y Medio-Ambiente*).⁷⁸ The sub-directorate of Fisheries Resources (*Subdirección General de Inspección Pesquera*) deals with inspections. Spain applies predominantly an administrative sanctioning regime and has introduced and implemented the penalty point system.

⁷⁷ FISHERIES.NO (2010). On the Reform of the Common Fisheries Policy [WWW]. Available from: http://www.fisheries.no/resource_management/Fishing-Fleet-Capacity/on-the-Reform-of-the-Common-Fisheries-Policy/#.VjC1UaIeaBs [Accessed on 10/01/2016].

⁷⁸ MAGRAMA (n.d.). Pesca [WWW]. Available from: <http://www.magrama.gob.es/es/pesca/temas/> [Accessed on 10/01/2016].

The Spanish Fisheries Act (*Ley N^o 33/2014 - Ley de pesca marítima del Estado*) deals with sea fisheries and establishes exclusive competence at central governmental level.⁷⁹ Royal Decree No. 114/2013 deals with the national register of serious infringements of the CFP.⁸⁰ It also establishes the norms needed for the application of the point system as well as the updated the sanctions foreseen in the Fisheries Act. The law aims to strengthen the capacity of the authorities in line with EU legislation to combat IUU fishing. Penalties can be given for serious infringement up to EUR 600,000.

Spain plays an important role in Europe as a flag state, coastal state, port state and market state. For control activities, according to the country the most important tools are VMS, licenses and catch recording. In order to counter problems such as lack of access to data, Spain has prioritized real time data exchange with more than 20 international fisheries monitoring centres. This way the country aims to have access to the same data as flag states allowing them this way to effectively inspect foreign vessels. Spain's fisheries monitoring centre operates on a 24/7 basis.

3.4.2.19. United Kingdom

In June 2013 the Marine Management Organisation (MMO) started using a national register for the points scheme for vessel licences.⁸¹ In the UK, the MMO applies points to the fishing license once the license holder of English-registered vessels is convicted of a serious infringement in a UK court. Offences committed in other MS will be referred to the vessel's relevant fisheries administration for the application of points. The MMO website contains a guidance document that clearly explains the rules concerning the system.⁸²

The relevant fisheries administration authorities for the PPS in the UK are the MMO (England), Scotland Marine, Welsh ministers, and the Department of Agriculture and Rural Development for Northern Ireland. Once accumulated points trigger the suspension of a license, the fisheries administration will exercise its powers under section 4 of the Sea Fish (Conservation) Act 1967. Suspension shall take effect once the period for appeal from conviction has expired. In England and Wales this will be 21-28 days after a sentence is imposed. In case a vessel is fishing during a period of suspension, the authorities may include it on the IUU vessel list.

The MMO Annual Report and Accounts 2014/2015 states that 567 inspections were carried out by the Royal Navy (compared to 587 in 2013/2014).⁸³ 99 infringements were identified, most of which required '*oral advice to achieve compliance*'. The number of identified infringement reduced compared to the year before from 142 to 99. According to the MMO this might be due to increased efforts to support and educate compliance.

In 2014, the UK launched a public consultation on the use of the PPS for masters of fishing vessels. The consultation aimed to collect views on proposals to introduce the PPS for masters of fishing vessels found guilty of serious infringements.⁸⁴ The consultation ran from 8 October 2014 to 19 November 2014 and received a total of 20 responses. The problem

⁷⁹ BOE (2014). Ley 33/2014 [WWW]. Available from: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-13516 [Accessed on 10/01/2016].

⁸⁰ BOE (2013). Real Decreto 114/2013 [WWW]. Available from: http://www.boe.es/diario_boe/txt.php?id=BOE-A-2013-2209 [Accessed on 10/01/2016].

⁸¹ MMO (n.d.) [WWW]. Available from: <https://www.gov.uk/government/organisations/marine-management-organisation> [Accessed on 10/01/2016].

⁸² MMO (2013). Guidance for the application of a points system for serious infringements [WWW]. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314545/points.pdf [Accessed on 10/01/2016].

⁸³ MMO (2015). Annual reports [WWW]. Available from: <https://www.gov.uk/government/publications/marine-management-organisation-annual-report-and-accounts-2014-to-2015> [Accessed on 10/01/2016].

⁸⁴ DEPARTMENT FOR ENVIRONMENT FOOD & RURAL AFFAIRS (2014). Consultation on introduction of EU points system for masters of fishing vessels [WWW]. Available from: https://consult.defra.gov.uk/fisheries/introduction-of-a-points-system-for-fishing-vessel/supporting_documents/Consultation_covering_letter_points.pdf [Accessed on 10/01/2016].

under consideration refers to the fact that the EU Control Regulation only sets out detailed rules for vessel licenses. At the same time, the regulation requires MS to establish also a points system for masters but refrains from establishing the details. Consequently, the UK is faced with the need to introduce secondary legislation. This presented the authorities with two options: do nothing or apply the PPS also to vessel masters. The former is not possible given that the UK is required to comply with EU requirements. The latter remains and was therefore subject to an impact assessment and a public consultation.

The impact assessment conducted by the UK authorities claim that the industry incurs minimal costs associated with the policy changes.⁸⁵ The main argument is that the policy relates to actions occurring as a result of illegal activity. Nonetheless, the report estimates business costs from familiarisation with the new system on GBP 14 634. Costs for vessel owners to check whether new masters have points is GBP 1 098. Non-monetised benefits identified by the authorities are the potential disincentive to re-offend.

Of the 3,973 vessels in England, Northern Ireland and Wales, approximately 70% have owners that are also masters. The policy change will therefore only apply to the rest (30% - 1,192 vessels) whose masters are not the vessels owners. Concerning the familiarisation costs, the impact assessment estimates that stakeholders require 10 minutes to read a government issued letter explaining the changes. This is, according to the authorities, sufficient for vessel owners to read and familiarise themselves with the extension to existing rules. With 3973 vessels times GBP 3,68⁸⁶ this would sum up to GBP 14 634. Those owners that are not vessel masters need to consult the National Register of suspended masters in order to check new masters. There is an estimated 25% turnover of masters, which corresponds to 298. Also this activity would require 10 minutes, each time costing GBP 3.68, summing up a total of GBP 1,098.

The public consultation first asked whether the number of points for masters of vessels should be based on the system in place for vessel licences. Overall respondents agreed with this approach. However, industry representatives warned for the possibility of double jeopardy in case the master of the vessel is also the license owner. The second question asked was whether respondents agree that the appropriate sanction when thresholds are reached is for a person to be unable to act as master of a fishing vessel. The respondents raised concerns about possible loopholes for these sanctions. For example, the penalty should include provisions to prohibit any engagement in fishing activity in order to avoid that a banned person would go aboard a vessel and still act off-the-record as master. Other concerns were raised concerning family owned vessels. A suspension in such case would be detrimental to their livelihood. The industry representatives highlighted that permanent suspension is disproportional and instead advocated for more lengthy suspensions. Opinions differed between respondents when asked about the severity of sanctions. Some found that penalties would not go far enough while others claimed tougher sanctions were required. Also the amounts of thresholds were subject of debate.

⁸⁵ DEPARTMENT FOR ENVIRONMENT FOOD & RURAL AFFAIRS (2014). Impact assessment [WWW]. Available from: https://consult.defra.gov.uk/fisheries/introduction-of-a-points-system-for-fishing-vessel/supporting_documents/Impact%20Assessment%20consultation%20141001.pdf [Accessed on 10/01/2016].

⁸⁶ The authorities base this figure on the hourly rate for managers and proprietors in forestry, fishing and related services, according to ONS ASHE 2013 standards.

4. RECOMMENDATIONS

This section presents recommendations based on good practices that address challenges facing implementation of the PPS. It aims to add value to the work of the PECH Committee by providing evidence-based and action-oriented recommendations for an EU-harmonised approach in the implementation of the PPS in order to sanction serious infringements.

4.1. Recommendations: CFP, control and enforcement

1. ISSUE	Fisheries management involves a wide variety of tools and there is no one-size-fits all solution to deal with challenges in fisheries. The effectiveness of fisheries management tools depends on the functioning of the system as a whole.
RECOMMENDATION	Include the assessment of the effectiveness and impact of the penalty point system into a wider system assessment of the Control Regulation.
2. ISSUE	EU control regulations leave room for manoeuvrability to Member States when enforcing fisheries rules. The EC reports periodically on Member State implementation.
RECOMMENDATION	Ensure real time and transparent monitoring of implementation of enforcement by the Member States.
3. ISSUE	It is expected that discard rules as a result of new landing obligations will pose a risk for fisheries compliance.
RECOMMENDATION	Enhance awareness raising activities through the EFCA towards industry players to prevent non-compliance.
4. ISSUE	Serious infringements defined by EU rules relate to violations of different fisheries management tools such as spatial planning, technical measures, input and output control measures. Prevention of serious infringements relates to many different elements of fisheries management.
RECOMMENDATION	Ensure also harmonisation and/or better understanding of the use of management tools behind the detailed infringement in order to prevent serious infringements from happening and to better sanction.
5. ISSUE	The penalty point system as detailed in the EU rules applies to fishing license holders. In addition, Member States are required to also adopt a similar system for masters of vessels.
RECOMMENDATION	Systematically map the different systems in EU Member States for the point system for masters of vessels.
6. ISSUE	A multitude of factors have been identified that contribute to good or bad economic performance of the fisheries sector.
RECOMMENDATION	Include the cost of serious fisheries infringements on the economy as a research focus when collecting and reporting on economic performance data from Member States.

7. ISSUE | Data on economic performance in some Member States is missing.
- RECOMMENDATION | Strengthen data collection activities at the Member State level.

4.2. Recommendations: implementation of the PPS

8. ISSUE | The diversity of the fisheries industry, lack of complete economic data and lack of detailed data on sanctioning complicate measuring socioeconomic impact of the PPS.

- RECOMMENDATION | Promote periodical impact assessments on the national level on the implementation and impact of the sanctioning system, including the penalty point system.

9. ISSUE | Industry players confirm the added value of a harmonised sanctioning system in the EU. At the same time, the industry lacks willingness to address this issue with their respective authorities.

- RECOMMENDATION | Include industry stakeholders in dialogue and engage them to strengthen equality in implementation of the PPS across the EU.

10. ISSUE | Risks have been identified that inspection authorities do not always facilitate access to relevant data to effectively inspect foreign vessels.

- RECOMMENDATION | Ensure that all fisheries monitoring centres have real time data exchange on fisheries activities.

11. ISSUE | Different approaches to output control, such as national rules on TAC swaps, pose problems to Member States when ensuring effective follow-up with flag states on detected infringements.

- RECOMMENDATION | Ensure that Member States exchange information on the use of control measures and avoid abuse of flag state rules in order to avoid points to be assigned.

12. ISSUE | Despite the lack of hard data, some anecdotal evidence points to fleet segments that are particularly vulnerable to the point system, such as small-scale vessels, family-owned vessels, and vessels fishing certain species.

- RECOMMENDATION | For the future, develop a clear methodology to assess the impact of the PPS on certain fleet segments. At this stage, make sure to prioritise and monitor those that are currently identified as vulnerable.

13. ISSUE | Points assigned have a direct effect on license suspension but can also have secondary effects on for example the value of vessels.

- RECOMMENDATION | Conduct an analysis on the potential effect of the points on market value of vessels.

14. ISSUE | Risks have been identified in that there is no effective follow-up on whether detected infringements are actually sanctioned.

- RECOMMENDATION | Make sure to enhance cooperation between inspection and sanctioning authorities without disregarding norms on separation of power.

15. ISSUE	Efforts to enhance collaboration through the EFCA primarily focuses on inspection efforts.
RECOMMENDATION	Expand the mandate of the EFCA in order to effectively coordinate sanctioning of fisheries infringements.
16. ISSUE	Overall challenges identified in relation to the penalty point system and its implementation relate to lack of transparency (e.g. on access to information at the national and EU level), problems of accountability (e.g. who is responsible for inspection and follow-up and how can this be enforced by the EC), and lack of participation (e.g. concerns from the industry - on the system's workings and integrity - and from civil society - on the complete lack of transparency which does not allow for public scrutiny).
RECOMMENDATION	Integrate transparency, accountability and participation as key principles for the penalty point system, and adopt subsequent measures to enhance this.

4.3. Follow-up recommendations 2014 briefing note

The 2014 briefing note included a list of recommendations. Whilst some of these recommendations fall outside the scope of the current report, we will aim to flag whether some of them are still relevant within the context of insights gained in 2015. Compared to the 2014 briefing note there are also some elements that have changed today.

The PPS, although introduced and implemented at different speeds across the EU does provide for deterrent sanctions. The 2014 briefing note highlighted the relevance of MS imposing deterrent sanctions for fisheries infringements. Those perceived as most deterrent are sanctions concerning suspension of fishing licences. The concerns of the industry voiced during the research for this study serves as a testimony to the perceived severity of the sanctions related to the PPS.

The following overview presents some of the main recommendations / issues identified in the 2014 briefing note that in our view are still relevant today.

2014 briefing note

Member States should enhance EU cooperation on inspecting fisheries and sanctioning infringements. One way to achieve this is through the already existing framework and activities of the EFCA.

Today

The need to enhance this cooperation on inspection and sanctioning remains a relevant area when addressing challenges with the PPS implementation.

2014 briefing note

Member States should enhance collaboration between their national inspection and sanctioning authorities. Shared responsibility for the follow-up of infringements benefits both authorities. Inspection and sanctioning cannot be addressed separately.

Today

There is still a need to enhance cooperation between inspection and sanctioning authorities without disregarding norms on separation of power.

2014 briefing note

Member States should promote harmonisation of the measures available to penalise CFP infringements in order to promote a level playing field and avoid migration of offenders to Member States where infringements are less severely punished.

Today

This recommendation remains partially valid. While the PPS allows for a harmonised system, the differences in implementation still bear risks of migration of offenders.

2014 briefing note

Member States should promote compliance with CFP rules through law enforcement in combination with raising awareness among stakeholders of the damaging effects of fisheries infringements.

Today

Awareness-raising to promote compliance remains a relevant area for action. This study highlights the lack of the industry to address harmonisation.

2014 briefing note

Transparent guidelines should be designed that include criteria for issuing warnings in case CFP infringements are detected. Lack of guidance to inspection officials risk potential abuse and could undermine the integrity of the system.

Today

This aspect remains relevant especially in relation to lack of transparency in terms of the criteria that are applied when determining whether an infringement is serious.

5. ANNEX

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Interview questions

Interview guide – Blomeyer & Sanz was contracted by the European Parliament PECH Committee to conduct a study on the social and economic impact of the penalty point system. The questions below are indicative and are meant to guide the interviewer and interviewees:

1. MS introduced and started applying the PPS at different stages/speeds. What were the main problems they faced?
2. What is the current status of the implementation of the PPS?
3. What are currently the main challenges with the implementation of the PPS?
 - a. The regulations give clear instructions for license holders but not for masters of vessels? Why so and did this generate problems for MS?
 - b. Are there specific countries that have not introduced this fully for masters of vessels?
4. What are the main challenges in the application of the PPS for third country vessels and third country sanctions on EU vessels such as the case of Norway?
5. What were the principle expectations of the PPS? (i.e. a level playing field / avoiding recidivism, etc.)
 - a. Three years further, have these expectations been met?
6. What is the socioeconomic impact of the PPS on different fleet segments, and in particular on smaller boats and businesses as well as the wider rural community?
7. Discrepancies in the national implementation of the PPS might create more favourable conditions for ships flying a MS flag with more lenient implementation rules. How is this addressed and how can such risks be minimized?
8. How accessible are the regulations, meaning the ease of understanding?
 - a. for MS / for industry / for civil society?
9. What are common misunderstandings or misinterpretation of the rules?
10. Are the implementation of the rules transparent?

Survey national authorities

General questions on the state-of-play of the penalty point system	
<p>The first part of the survey aims to collect information on the detection of serious fisheries infringements as well as information on the sanctioning mechanisms and penalties on the national level.</p>	
<p>1. Please indicate whether your country has implemented and applied the point system for serious infringements as foreseen in Council Regulation (EC) No 1224/2009, Article 92:</p>	
When has the system been put in place?	<input type="text"/>
Since when has the system been fully operational?	<input type="text"/>
At this stage, have penalty points been assigned to offenders of the fisheries legislation?	<input type="text"/>
<p>2. Please list the responsible authority for</p>	
inspection of fisheries:	<input type="text"/>
sanctioning of fisheries infringements:	<input type="text"/>
application of the penalty point system:	<input type="text"/>
<p>3. Please list the general sequence of activities from the moment of detecting a serious infringement to the sanctioning of the serious infringement:</p>	
<input type="text"/>	
<p>4. At what stage in the sequence are penalty points assigned?</p>	
<input type="text"/>	
<p>5. Please select the top three most common serious fisheries infringements detected in your country:</p>	
<small>List of serious infringements</small>	
First	<input type="text"/>
Second	<input type="text"/>
Third	<input type="text"/>

6. Please select the stakeholders that can be assigned penalty points:

holder of fishing license

master of fishing vessel

Other (please specify)

Data collection questions on serious infringements and sanctions imposed in your country

This part of the survey aims to collect some basic data on serious fisheries infringements on the national level.

7. Please complete the following matrix based on data from the national registry of infringements:

	serious infringements detected	serious infringements sanctioned	penalty points assigned
2010	<input type="text"/>	<input type="text"/>	<input type="text"/>
2011	<input type="text"/>	<input type="text"/>	<input type="text"/>
2012	<input type="text"/>	<input type="text"/>	<input type="text"/>
2013	<input type="text"/>	<input type="text"/>	<input type="text"/>
2014	<input type="text"/>	<input type="text"/>	<input type="text"/>

8. Please complete the following matrix based on data from the national registry of infringements:

	times imposed since the entering into force of the penalty point system
first time offender - 2 months suspension	<input type="text"/>
second time offender - 4 months suspension	<input type="text"/>
third time offender - 8 months suspension	<input type="text"/>
fourth time offender - 1 year suspension	<input type="text"/>
fifth time offender - permanent suspension	<input type="text"/>

9. Additional comments:

In case no data has been introduced in questions 7-8, please indicate whether and/or where data is publicly available on inspections, infringements detected and sanctions imposed / points assigned.

Assessment questions on challenges, risks and mitigation

The final part of the survey aims to generate a better understanding of the challenges faced when implementing the penalty point system, the system's impact and way forward

10. What are the main challenges for the authorities in the application of the penalty points system?

for third country vessels:

third country sanctions on EU vessels:

for EU member state vessels:

for national vessels:

11. What is the socioeconomic impact of the penalty point system?

For example on working conditions of different fleet segments (in particular on smaller boats and businesses) but also on the wider rural community, economic performance, profitability, and employment.

12. Discrepancies in the national implementation of the penalty point system might create more favourable conditions for ships flying an EU member states flag with more lenient implementation rules.

How is this addressed and how can such risks be minimised?

13. How accessible are the EU regulations, meaning the ease of understanding? What are common misunderstandings or misinterpretation of the rules?

for member states:

for industry:

for civil society:

<p>14. Do you have any other comments?</p> <div data-bbox="309 311 1070 521" style="border: 1px solid black; height: 94px; width: 477px;"></div>	
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Survey industry

General questions on the state-of-play of the penalty point system

1. Please indicate whether your country's authorities have implemented and applied the point system for serious infringements as foreseen in Council Regulation (EC) No 1224/2009, Article 92:

When has the system been put in place?

Since when has the system been fully operational?

At this stage, have penalty points been assigned to offenders of the fisheries legislation?

2. Please list the responsible authority for

inspection of fisheries:

sanctioning of fisheries infringements:

application of the penalty point system:

3. Please select the stakeholders that can be assigned penalty points:

holder of fishing license

master of fishing vessel

Other (please specify)

Assessment questions on challenges, risks and mitigation

4. What are the industry's main concerns in relation to compliance with fisheries regulations?

5. What are the industry's main concerns in relation to the application of the penalty point system by the authorities?

6. What effect / impact has the penalty point system on the industry?

For example on working conditions of different fleet segments (in particular on smaller boats and businesses) but also on the wider rural community, economic performance, profitability, and employment.

7. Differences in the national implementation of the penalty point system might create more favourable conditions for ships flying an EU member states flag with more lenient implementation rules.

Is this a concern for the industry? How is this addressed and how can such risks be minimised?

8. How accessible are the EU regulations on fisheries, meaning the ease of understanding for the industry? What are common misunderstandings or misinterpretation of the rules?

9. Do you have any other comments?

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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