ILLEGAL, UNREPORTED AND UNREGULATED FISHING
SANCTIONS IN THE EU
Content

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Briefing note objectives

• The briefing note aims to add value to the work of the PECH committee by providing information on the different approaches for addressing IUU infringements in different Member States, as well as an analysis of existing and international measures in order to formulate recommendations for harmonisation of penalties.
Illegal, Unreported and Unregulated Fishing

• Definition of IUU fishing
  – Article 2 to 4, IUU Regulation, and Article 3, International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
• The main problem with estimating the global size of IUU fishing is the quality and comparability of available data.
• Addressing IUU fishing is problematic due to the multitude of actors involved as well as the nature of the fisheries sector.
• The right approach to enforce fisheries rules depends on the characteristics of IUU offenders. A vessel engaged in IUU fishing may be licensed or unlicensed, foreign or national, operating in an EEZ or on the high seas. Besides, operators may be laundering illegally caught product by mixing legal and illegal catch, thus inserting IUU products on the market through legitimate trade relationships.
Consequences of IUU fishing

- A social consequence of IUU fishing is its potential use of workers without effective control. Reports on forced labour in fisheries highlight the vulnerability of seafarers being subject to unsafe working conditions, excessive working hours and low salaries.
- Legal fisheries in particular suffer from IUU activities as depleted fish stocks may lead to increased costs and consequently to lower revenue and ultimately unemployment. This in turn may promote illegality as fishermen may consider breaking the rules in order to survive.
Causes of IUU fishing

- Stakeholders engage in IUU activities primarily due to economic incentives in a global market with growing demand for fish.
- A mixture of regional and national laws aiming to regulate the global market, with different levels of regulatory enforcement, makes the market vulnerable to abuse.
- When the risk of getting caught is low, and the proceeds from the crime exceed the consequence of the unlawful act (i.e. sanction), the offender is more likely to engage in non-compliant behaviour. Various economic, institutional and social factors can cause IUU fishing.
Challenges when fighting IUU fishing

• Gaps in international legal frameworks allow IUU activities to fall outside the scope of national or international agreements.

• Differences in levels of MCS risk providing opportunities for IUU offenders, which could direct their activities to areas with weaker control. In addition, low levels of MCS could reduce the probability of detection, increasing IUU revenue and lowering costs.

• Differences in the level of penalties imposed could undermine compliance. Low fines fail to deter further IUU fishing.
Addressing IUU fishing in the EU

- The IUU Regulation is one of the three pillars of the EU fisheries control system. The control system aims to promote transparency and ensure non-discrimination between EU and third country fisheries.
- The IUU Regulation applies 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.’ It applies to catches from EU vessels to be exported to third countries as well as transhipments and processing operations. The regulation includes various important instruments:
  - IUU vessel list and list of non-cooperation third countries
  - Catch certification scheme
  - Port state controls
  - Mutual assistance
  - EU Alert System
Control and enforcement of IUU fishing in the EU

• Definition control, inspection and enforcement.
  – The Control Regulation

• 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’. MS can carry out inspections by themselves or through joint-deployment plans.

• Control of third country vessels is important in combatting IUU fishing. According to EU rules at least 5% of transhipments and landings by third country vessels need to be inspected. This must be done according to objective criteria except in case of suspicion of non-compliance.
IUU infringements

- MS shall start a full investigation of a suspected infringement and take immediate enforcement measures in conformity with their national law.
- The IUU Regulation sets benchmarks for sanctions in case of serious infringements (Art. 44). 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.’
- Most common types of sanctions.
Point system

- The Control Regulation established the point system and focuses on serious infringements. As from January 2012, each MS should have set up a system which allows for penalty points to be assigned to holders of fishing licences (companies or individuals) and/or masters of vessels in case of serious infringements.

- In addition, each MS should establish a national register of infringements, which records infringements committed, and the sanctions imposed and points assigned. This register should include data on infringements dating back to 2011, covering national vessels and citizens.

- The point system addresses the problem of recidivism of IUU offenders. The gravity of the penalty increases with each repeat offence. In addition, the system rewards compliant behaviour by allowing subtraction of points.
Implementing the IUU regulation

- The IUU Regulation provides for a framework that limits access of IUU fish to the market. This is essential in the global fight against IUU fishing. The lack of an international legal framework that limits entry of illegal fish to the market shows the innovativeness of the IUU Regulation.
- To ensure compliance of MS with the CFP rules, the EC can control and evaluate by means of ‘examination of information and documents and by conducting verifications, autonomous inspections and audits’, including 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’.
- The EC is responsible for overall coordination of the implementation of the IUU Regulation. In operational terms this means that the EC is responsible for coordinating the EU Alert System, the EU IUU Vessel List, and the Non-cooperating Country List.
Implementing the IUU Regulation

• There are concerns that the heaviest administrative burden of the IUU Regulation is carried by the main import countries that also receive most third country vessels in their ports.
• The IUU Regulation required changes in institutional and governance arrangements. While fisheries authorities often deal with inspection services, customs authorities deal with the review and validation of catch certificates. Similar challenges are identified when analysing the follow-up of detected infringements. Either ministries or courts deal with sanctioning of infringements.
• The involvement of different public authorities at different levels complicates oversight roles and responsibilities, and this may also limit effectiveness and efficiency. Apart from affecting the harmonisation of EU control efforts, it could also create an additional administrative burden for economic operators.
Sanctioning and infringement procedures

- The competence to impose administrative sanctions may be hierarchically divided between authorities, depending on the gravity of the infringement, and/or may be divided between governmental levels.
- The general use of administrative procedures for fisheries infringements requires clear rules of procedure, especially because criminal procedural standards do not apply, and administrative authorities have to be controlled.
- Out-of-court settlements allow for quick sanctioning and are tailor-made to the nature of the offence and offender. This may enhance the effectiveness of the sanction, which in turn strengthens the authority of law enforcement officers. A clear disadvantage is the discretion of the procedure.
- In practice different levels of fines are applied across the EU. This may cause discrimination and unfair competition in the fisheries sector. This in turn undermines the entire *raison d’être* of the Union, namely creating a level playing field for the Single Market.
Key findings

• Licencing and registration
  – A key area for improvement is the tracking of ownership of fishing vessels.
  – This study has highlighted the importance of transparency of fishing activity data.

• Monitoring, control and surveillance
  – Difference in levels of MCS risk that IUU offenders direct their activities to areas with weaker control.
  – Responsibility of MCS activities lies both with third countries and EU MS.
  – Gaps in the international legal framework allow IUU activities to fall outside the scope of national or international agreements.
  – Exchange of information on MCS activities between MS is considered of great importance.

• Establishing penalties
  – When establishing penalties, states need to take into account the severity of penalties and the potential deterrent effect.
  – Diversity of national approaches to dealing with fisheries control and sanctioning could be perceived as discriminatory.
Key recommendations

• Recommendations on licencing and registration
  – Promote the establishment of an international register of fishing vessels.
  – Strengthen national registries of fishing vessels.
  – Licence all nationals engaged in fishing activity.
  – Promote transparency on fishing ownership structures and activities in EEZs.

• Recommendations on MCS
  – Harmonise levels of MCS in EU MS.
  – Support fisheries governance mechanisms in third countries.
  – Prioritise detection of IUU infringements and enhance professionalism.

• Recommendations on sanctioning
  – Exchange information on rules of procedure.
  – Develop a common sanction schedule.
  – Avoid protracting of sanctioning.
  – Enhance transparency in out-of-court settlements.
  – Promote the use of the point system.
Thank you

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