

Transparency as a crucial tool to improve the implementation of EU fisheries control rules

EU decision-makers, fishers and civil society do not have the information necessary to assess whether the Control Regulation is effectively implemented. This lack of transparency creates a culture of mistrust and the potential for misinformation and mismanagement, ultimately jeopardising the objectives of the Common Fisheries Policy. It is therefore necessary to increase transparency in the implementation of the EU fisheries control system with a view to creating a culture of trust, collaboration and compliance.

Transparency - why it matters.

The availability of relevant and complete data for policy-making and information to the general public are key drivers to facilitate policy change towards more sustainable fisheries, a recent OECD study concluded.¹ In the framework of the Control Regulation, transparency is a crucial tool to assess whether fisheries control rules are effectively implemented across the EU; and thus whether the fishing monitoring and control systems in Member States' support the implementation of the EU's Common Fisheries policy.

Having access to up-to-date and meaningful information on the implementation of control and monitoring rules will help decision-makers and other stakeholders to identify existing challenges and to propose effective solutions. Moreover, knowledge on control and monitoring efforts in all EU Member States ensures that stakeholders trust the system, thereby contributing to a much-needed culture of compliance in the Common Fisheries Policy.

For example, currently many fishers across the EU feel that they are treated unfairly and unequally.² In a 2016 report, the European Parliament proposed therefore that *"information on whether and how Member States are sanctioning different types of infringements, and whether sanctions are applied consistently, regardless of a vessel's flag, must be made available to stakeholders and the public"*.³

Globally, the European Union has been a pioneer in improving fisheries governance in third countries through its efforts to tackle illegal, unreported and unregulated (IUU fishing) under the IUU Regulation. As the world's biggest seafood market and as the standard-bearer, the EU has a duty to prioritise transparency in the revision of the EU Fisheries Control System.

Transparency - what are the issues.

The lack of transparency on the implementation of the current Control Regulation can be exemplified by the following three provisions:

1. Undisclosed five-yearly reporting by Member States. Every five years Member States must submit a report to the Commission on the implementation of the Control Regulation (article 118). In this report, they provide detailed information on their monitoring and control efforts as well as aggregated data on

¹ OECD, "Encouraging policy change for sustainable and resilient fisheries", 2019. https://www.oecd-ilibrary.org/agriculture-and-food/encouraging-policy-change-for-sustainable-and-resilient-fisheries_31f15060-en.

² European Commission, REFIT Report of 24 April 2017, 'Evaluation of the impact of the fisheries regulation', <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0192&from=en>

³ European Parliament, Report 2015/2093(INI) of 18 July 2016, 'How to make fisheries controls in Europe uniform', https://www.europarl.europa.eu/doceo/document/TA-8-2016-0407_EN.pdf, §75.

enforcement. In addition to being very infrequent, these reports are published neither on the website of the Member States nor on the website of the Commission.⁴

2. Unjustified Member State veto. Member States have the right to veto a Commission decision to share information on the implementation of the control rules (article 113 para. 2 and 3). This is in clear contradiction with the jurisprudence of the European Court of Justice, which stipulates that the Commission should be able to release environmental data, as well as the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters and its implementing legislation in EU law.⁵
3. Stakeholders are kept in the dark. Very little fisheries data is currently accessible to scientists, journalists, industry, third country inspectors and civil society (article 110). Allowing these stakeholders to monitor key fisheries data would foster independent scientific analysis, investigative journalism and the identification of suspicious behaviour at sea. These activities do not only act as a deterrent but they also help competent authorities in identifying sustainable trends and red flags in the implementation of the fisheries control system.⁶

Transparency - how to make transparency work for the EU fisheries control system.

The Commission's proposal to revise the current control system does not remedy the existing lack of transparency in the implementation of the Control Regulation. We therefore propose the following amendments:

1. Article 118 - bi-annual public reporting: reports by Member States every two years on the implementation of the Control Regulation, the same frequency as under the IUU regulation. These reports should be publicly available on the website of Member States and the European Commission.
2. Article 110 or 115 - increase public information: require that Member States publish on an annual basis the annual reports of their national control programmes, with the following information: (a) total budget allocated to fisheries control; (b) number and type of inspections and controls performed; (c) number and type of suspected and confirmed infringements, including serious infringements (d) type of follow-up actions to confirmed infringements (simple warning, administrative sanction, criminal sanction, immediate enforcement measure, number of penalty points administered); and (e) number, place and type of lost fishing gears.
3. Article 113 - remove Member State veto: removing the right by Member States to veto the transmission of environmental data in paragraph 2 and 3.
4. Article 110 - access to fisheries data on legitimate interest basis: Ensuring access to key fisheries data for any person who can establish a "legitimate interest".

⁴ Note that the Commission summarizes the findings of the Member States reports in a submission to the European Parliament and the Council but this submission is far too general. See: COM (2017) 192 Final, Report from the Commission to the European Parliament and to the Council, Implementation and evaluation of Regulation 1224/2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy as required under Article 118.

⁵ And notably Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents and Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

⁶ The recent Swedish "Sprat and Herring" case underlined the importance of cross checking fishing data. In this case, 29 inspections of large-scale Swedish commercial fisheries found that fishers took around 50% more Sprat from the Baltic Sea than reported and 50% less herring. This misreporting – to the tune of 4.358 tonnes – is not only illegal, it also contributes to a misleading picture of stock status and incorrect scientific advice on fishing opportunities.