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NOTE

from:	General Secretariat of the Council
to:	Working Party on Internal and External Fisheries Policy
No. Cion prop.:	11914/12 PECHE 248 CODEC 1782 - COM(2012) 332 final
Subject:	Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing - Report from the European Parliament Committee on Fisheries

Delegations will find attached for their information the above-mentioned report from the European Parliament Committee on Fisheries, dated 25 April 2013.



EUROPEAN PARLIAMENT

2009 - 2014

Plenary sitting

A7-0144/2013

25.4.2013

*****I**

REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (COM(2012)0332 – C7-0158/2012 – 2012/0162(COD))

Committee on Fisheries

Rapporteur: Raül Romeva i Rueda

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (COM(2012)0332 – C7-0158/2012 – 2012/0162(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0332),
- having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0158/2012),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 28 March 2012¹
- having regard to Rule 55 of its Rules of Procedure,
- having regard to the report of the Committee on Fisheries (A7-0144/2013),

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for the adoption of delegated acts, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and

Amendment

(4) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for the adoption of delegated acts, including at expert level, ***so that it has objective, rigorous, complete and up-to-date information.*** The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and

¹ OJ C 181, 21.6.2012, p. 183.

Council.

appropriate transmission of relevant documents to the European Parliament and *to the* Council.

Amendment 2

Proposal for a regulation

Article 1 – point 19

Regulation (EC) No 1005/2008

Article 54a (new) – paragraph 2

Text proposed by the Commission

2. The ***delegation of powers*** referred to in Articles 6(3), 9(1), 12(5), 12(6), 16(1), 16(4) and 17(3) shall be conferred for ***an indeterminate*** period of ***time***.

Amendment

2. The ***power to adopt delegated acts*** referred to in Articles 6(3), 9(1), 12(5), 12(6), 16(1), 16(4) and 17(3) shall be conferred ***on the Commission*** for a period of ***three years*** from ...*. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

**** OJ: please insert the date of the entry into force of this Regulation.***

Justification

It seems more appropriate to limit the delegation in time and to oblige the Commission to report on its exercise in order to have a regular evaluation and questioning of the use of the delegation.

EXPLANATORY STATEMENT

The general context

Fish caught illegally can often appear economically attractive. Since it is caught by disregarding environmental, social and other standards, the fishermen can usually sell it for less money. Wholesalers and retailers thus find it less expensive to buy, though they may not always know that it has been caught illegally.

This explains the distinct lack of enthusiasm on the part of many for the IUU regulation. It is easy to be against illegal fishing in principle, in fact it is difficult to not be. But when opposition to illegal fishing can lead to interruptions in supply of fish to the EU market, or reduce profits, or interfere with trade with "important" trading partners of the EU, then illegal fishing becomes much more difficult to fight. That, at least, has been the experience in the EU with Regulation 1005/2008.

When the Commission first made its proposal in 2007 it was met with immediate and profound hostility from several quarters. Many Member States complained that it would "interfere with trade", or would be too costly and difficult to implement. Many did not want EU vessels to be included in the scope of the IUU regulation, arguing that IUU fishing was done by others, not by Europeans. Curiously, the most vigorous opposition to the proposal came from the northern countries, which depend more upon trade to satisfy their market and which are usually considered to be more in favour of controls and sanctions. Spain accepted the main principles of the proposal almost immediately.

Various DGs in the Commission also argued along these same lines.

In short, making speeches against IUU fishing was a "good thing" but taking action was different.

Now, several years later, the regulation is in force. So far, the Commission has notified eight countries¹ of the possibility of their being identified as third countries that the Commission considers as non-cooperating third countries in the fight against IUU fishing. Formal identification could follow in six months and that would lead to trade and other sanctions (Art. 38).

¹ Belize, Cambodia, Fiji, Guinea, Panama, Sri Lanka, Togo, Vanuatu

While this development is to be welcomed, it is only a first step.

These countries are relatively small actors on the global IUU stage. Many much larger countries are also involved in IUU fishing in various ways, either as flag State, coastal State, processing State or other. Countries that come to mind as possibilities include Korea, Russia, Indonesia, the Philippines, Thailand, Papua New Guinea and even China. While the case to identify such countries must be solid, in order for the identification to be legally irrefutable, which takes time and resources, the Commission must not shy away from this. Indeed, the Commission must ensure that it dedicates sufficient financial and personnel resources to investigate other countries and, if warranted, identify them quickly and efficiently.

However, the same forces and mostly the same arguments that were evident during the adoption of the regulation are still at work, hindering the advancement of the fight against IUU fishing.

The notification of the eight countries listed above took an extraordinarily long time to emerge from the Commission, raising concerns about the degree of enthusiasm for full use of the regulation in places. Indeed, there are still no vessels on the EU IUU vessel list that are not due to RFMO lists. It is difficult to believe that there is not a single vessel – either EU flagged or foreign – for which the Commission has sufficient information to justify it being added.

Astonishingly, when the Commission sent its draft list of countries to the Member States, certain Member States initially defended their “partner” countries. In the end, only the UK was so upset about the inclusion of Belize and Sri Lanka that it abstained in the vote in the management committee.

The free trade agenda of the Commission and many Member States still appears to weigh more heavily in the political balance than the need to end what a former Commissioner once called the “scourge of the oceans”. It is this factor that probably has prevented serious consideration of Korea, with which the EU has recently signed a free trade agreement.

Yet IUU fishing is one of the most serious threats to marine biodiversity and can result in problems of food security in many coastal and developing countries.

In the USA, the fight against IUU fishing falls under the Magnuson-Stevens Act. It has recently published its third biennial list of countries identified as having vessels engaged in IUU fishing. In contrast to the timid list of the EU, the Americans do include a number of larger IUU fish than the EU has done, such as Korea, Mexico and, rather embarrassingly, Spain and Italy. The Commission should immediately consult with the Americans to compare information and, if justified, add further countries. There is a Memorandum of Understanding between the EU and the US to facilitate such things, as there is with Japan.

The Parliament has repeatedly adopted reports and resolutions encouraging the Commission to pursue the fight against IUU fishing with all the resources it can command and by as many avenues as possible, including discouraging reflagging, collection of information on private agreements, improved product traceability and enhanced international cooperation and information exchange, among others. All the services of the Commission must work together to find ways to ensure and facilitate the effective application of the regulation, to implement the policies and legislation of the Union.

The EU IUU regulation is ground-breaking, the only one in the world that is so comprehensive in its scope and the measures it allows. Yet such a piece of legislation is only worth having if it is to be fully used. Limiting its application to a rather unimpressive range of IUU players risks allowing, even encouraging, it to be viewed as a paper tiger, a decoration that the EU can boast about but others need not fear.

The Treaty of Lisbon has introduced a new hierarchy of norms comprising three levels. At the first level are the legislative acts which are adopted by the legislators in accordance with the ordinary legislative procedure, where the European Parliament and the Council decide as equal co-legislators (see Article 294 of the Treaty on the Functioning of the European Union - **TFEU**), or in accordance with special legislative procedures. Furthermore, the legislator may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act (so-called delegated acts, defined in Article 290 (1) of the TFEU), which form the second level of norms. Legally binding Union acts may also confer implementing powers on the Commission where uniform conditions for implementing these Union acts are needed. On that basis the Commission adopts so-called implementing acts (see Article 291 of the TFEU), constituting the third level.

The choice of which type of act to use is not always clear cut. Delegated acts and implementing acts, compared to legislative acts, have the advantage of providing the possibility to react swiftly to a new situation. Whereas the ordinary legislative procedure and the use of delegated acts guarantee the participation of Parliament on an equal footing with the Council, the use of implementing acts entails the *de facto* exclusion of Parliament, since its right of scrutiny does not oblige the Commission to follow Parliament's position.

The Commission proposal

In the context of the alignment of Regulation (EC) No 1005/2008 to the new rules of the TFEU, the Commission has prepared a draft proposal classifying the powers currently conferred to the Commission by that Regulation into measures of delegated nature and measures of implementing nature. In general, the changes proposed concern only the types of acts to be adopted and do not modify the content of the measures. There is only a significant change in the procedure applied to the inclusion of identified third countries on a list of non cooperating third countries or to its removal.

The Commission proposes to be empowered to adopt delegated acts to grant exemption from notification of information by fishing vessels or to establish different notification periods, to determine benchmarks for inspections of landing and transshipment operations by third country fishing vessels, to adapt the catch certification scheme for some fishery products obtained by small fishing vessels, including the possibility of using a simplified catch certificate, to amend the list of products not included in the scope of the Regulation, to adapt the catch certificate submission deadline to the type of fishery product, the distance to the place of entry or the transport means used, to establish rules for the granting, amendment or withdrawal of approved economic operators' certificates or for the suspension or revocation of the status of approved economic operator and on the conditions of validity of approved economic operators' certificates, and to establish Union criteria for verifications in the context of risk management.

The Commission proposes to confer implementing powers to the Commission for the establishment of prior notification forms, the establishment of landing and transshipment declaration procedures and forms, the adoption, in agreement with flag States, of catch certificates established, validated or submitted by electronic means or based on electronic traceability systems ensuring the same level of control by authorities, the determination and modification of the list of catch certification schemes adopted by regional fisheries management organisations complying with the EU IUU Regulation, the establishment of common conditions in all Member States for procedures and forms on the application for and issuing of approved economic operators' certificates, of rules on verifications of approved economic operator and of rules on the exchange of information between the approved economic operator and the authorities in the Member States, between the Member States and between Member States and the Commission, the establishment of the Union IUU vessel list, the removal of vessels from the Union IUU vessel list, the inclusion of IUU vessel lists adopted by regional fisheries management organisations in the Union IUU vessel list, the identification of non-cooperating third countries, the inclusion of identified third countries on a list of non cooperating third countries, the removal of third countries from the list of non-cooperating third countries, the adoption of emergency measures towards third countries in specific circumstances, the establishment of the format for submission by Member States of the information regarding sighted fishing vessels and the establishment of rules on mutual assistance

The rapporteur's view

The rapporteur is globally satisfied with the choices made by the Commission where it proposes changes. Nevertheless, the rapporteur is of the opinion that where delegated acts are proposed, the delegation should be limited in time in order to allow for a regular evaluation of its use.

PROCEDURE

Title	Establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing		
References	COM(2012)0332 – C7-0158/2012 – 2012/0162(COD)		
Date submitted to Parliament	21.6.2012		
Committee responsible Date announced in plenary	PECH 3.7.2012		
Committee(s) asked for opinion(s) Date announced in plenary	DEVE 3.7.2012	INTA 3.7.2012	ENVI 3.7.2012
Not delivering opinions Date of decision	DEVE 10.7.2012	INTA 11.7.2012	ENVI 10.7.2012
Rapporteur(s) Date appointed	Raül Romeva i Rueda 6.9.2012		
Discussed in committee	6.9.2012	6.11.2012	18.2.2013
Date adopted	23.4.2013		
Result of final vote	+: 23 -: 0 0: 0		
Members present for the final vote	John Stuart Agnew, Antonello Antinoro, Kriton Arsenis, Chris Davies, Carmen Fraga Estévez, Pat the Cope Gallagher, Dolores García-Hierro Caraballo, Marek Józef Gróbarczyk, Ian Hudghton, Werner Kuhn, Jean-Marie Le Pen, Isabella Lövin, Gabriel Mato Adrover, Maria do Céu Patrão Neves, Crescenzo Rivellini, Ulrike Rodust, Raül Romeva i Rueda, Struan Stevenson, Isabelle Thomas, Nils Torvalds, Jarosław Leszek Wałęsa		
Substitute(s) present for the final vote	Ole Christensen, Jean Louis Cottigny, Diane Dodds, Barbara Matera, Gesine Meissner, Mario Pirillo, Nikolaos Salavrakos		
Date tabled	25.4.2013		