

Explanatory Note

Revision of the EU-fisheries control system in the context of the European Green Deal and the EU Biodiversity Strategy 2030

The Commission submitted a proposal for a comprehensive reform of the EU's fisheries control system ([COM\(2018\)368 final](#)) in order to modernise the current system by using the benefits of the digital transformation to support the ecological transformation. The report adopted by the PECH Committee on 5 February 2021 will be submitted for a plenary vote in view of establishing the EP's position in trilogues during the March I EP plenary ([report AGUILERA](#)).

While the PECH Report is supportive of many important features proposed¹, a series of amendments adopted during the vote in the PECH committee raise important concerns in view of the European Green Deal (Biodiversity Strategy), the digital transformation of the EU, social justice and the international credibility of the EU in ocean governance.

More concretely, these concerning amendments would lead to a **backtracking** compared to the current control system on key issues, such as on reporting on the quantities of fish caught. Such underreporting could lead to **massive overfishing** and thereby undermine the objectives of the EU Biodiversity Strategy. It would also put at risk the **credibility of the EU** as a global leader on ocean governance and in particular in its zero-tolerance approach towards illegal, unreported and unregulated (IUU) fishing by third countries (while at the same time, the PECH Report contains amendments to enhance the fight against illegal, unreported and unregulated (IUU) fishing in third countries). Furthermore, certain amendments lead to loopholes, which will largely benefit bigger more profitable vessels, at the expense of smaller vessels. As some amendments limit the use of modern technology (such as CCTV cameras) in a control system that is largely still paper-based, the **digital and green transition** promoted by the EU Green Deal would **not be achieved** in the fishing sector. This is also a missed opportunity for innovation and digital know-how and ultimately for the creation of new jobs.

The amendments of concern are:

- Amendments 81, 82 and 107 on the logbook / margin of tolerance, **legalising massive underreporting and thus leading to a deterioration of fish stocks, undermining the objective of achieving the Common Fisheries Policy's sustainability targets. They are also extremely detrimental for the EU's role as champion of the ocean governance at international level and introduce an unlevel playing field between small scale fisheries and large and distant fisheries;**
- Amendments 120, 121, 122, 124 and 125 on an only voluntary use of CCTV cameras, **will allow illegal discards (including of sensitive species) to continue and threaten the sustainable exploitation of marine biological resources;**
- Amendments 134, 135 and 136 on engine power **will limit the possibility to effectively control the engine power of fishing vessels, leading to potential excess in fishing capacity and therefore overexploitation of marine biological resources.**

This explanatory note briefly explains the issues at stake.

¹ E.g. electronic vessel position monitoring and reporting system for small scale vessels; more obligations for recreational fisheries; traceability for EU and imported fishery and aquaculture products.

The unsustainable use of the sea and the overexploitation of natural resources are the most important drivers of biodiversity loss according to the **EU Biodiversity strategy of 2020**.

The only way for the Union to ensure that fishing activities remain at sustainable levels and prevent overfishing is to obtain **accurate fisheries data**, to **prevent illegal discards** of unwanted fish in line the Landing Obligation and to have adequate tools to **control fishing capacity**. In addition, these tools are needed to protect marine sensitive species (i.e. dolphins) and marine protected areas.

Accurate fisheries data, proper control of fishing capacity and ensuring control and prevention of discards are necessary to achieve sustainable fishing, restore biodiversity and achieve the objectives of the Green Deal.

The investments necessary in order to implement controls tools foreseen under the Commission proposal on the EU-fisheries control system are supported by the European Maritime Fisheries and Aquaculture Fund (EMFAF).

The amendments listed above provide important loopholes in the control of large fishing vessels in contrast to the new control measures developed for small scale and recreational fisheries.

There are 3 main areas of concerns:

1. Legalising underreporting

What is at stake?

Amendments 81, 82 and 107 will legalise underreporting of catches, will lead to overexploitation and deterioration of fish stocks and will undermine the objective of achieving the CFP's sustainability targets (i.e. achieving the Maximum Sustainable Yield (MSY)). For this reason, it is essential that the existing rules on the logbook and the margin of tolerance are not relaxed. A relaxation of the rules on the logbook and margin of tolerance poses a direct threat to the sustainability of EU fishing.

By promoting and rewarding underreporting, those amendments are extremely detrimental for the role of the EU as champion of improved ocean governance at international level.

What is the margin of tolerance (MOT?)

Fishing operators and vessels masters play a very important role in ensuring that their catches do not go beyond the maximum quotas allocated to them/to their Member State. Exceeding those quotas leads to unsustainable fishing and over time to depletion of fishing stocks and to disruption of the marine ecosystem. Therefore, masters are requested to report their catches in the **fishing logbook** while at sea. This report is done in kg by species, and based on masters' estimations.

In order to account for the level of uncertainties in such estimation, more than 10 years ago, when the EU Fisheries Control Regulation (EC) No 1224/2009 was conceived, EU masters were granted a generous blanket tolerance (*margin of tolerance*) of 10% in their estimations per species. Prior to 2009, in 1983 the general tolerance was set at 20%, while tolerance of 8% was adopted in the 2000s for several stocks subject to multiannual recovery plans.

Techniques and technologies available today and in use on board the large majority of fishing vessels, in particular the larger ones, make it possible to estimate catches much more accurately than 10% while at sea.

In conclusion, **masters are able to know exactly the quantity and value of the fish they have on board with a minimum margin of error.** In many cases, the catches are even sold before landing, which requires masters and vessels' owners to have a precise account of the quantities on board.

Why is setting a margin of tolerance so important?

Because it is the best incentive to avoid underreporting by operators, given that only a small percentage of landings are inspected.

Operators can be in fact tempted to misreport the quantities of fishery products in the fishing logbook and other catch registration documents such as landing declarations and sales notes. By doing so, some operators can **circumvent quota restrictions, "stretch" fishing opportunities** and stand to make **greater profits**. This is not only **detrimental** for the **marine ecosystem**, but also creates conditions of **unfair competition** among operators, penalising honest fishers, and may also imply **tax evasion** in the worst cases.

The rules on the margin of tolerance in the Control Regulation, **serve to mitigate the extent to which this misreporting can take place.** In case the declaration by the master is found in breach of the margin of tolerance, the control authorities will apply proportionate sanctions/follow-up actions depending on their national law and on the gravity of the violation.

What are the gains with a higher margin of tolerance

The level of **misreporting** – and of the gains for operators- may be up to **twice as** the value of the margin of tolerance. This means that a margin of tolerance of 10%, could 'hide' **misreporting up to 20%** of the actual catches.

Example: Tropical tunas (fished by the EU fleet in West Africa and in the Indian Ocean in the waters of developing countries thanks to bilateral agreements concluded by the EU)

A. Real catches on board (yellowfin tuna):	110.000 kg
B. Catches declared in the logbook:	100.000 kg
C. No inspections at landing	
D. Catches declared in the landing declaration:	90.000 kg

The difference between A/B and B/D is each time within the 10%, thus compliant with the maximum error allowed in EU law. However, the net gain for underreporting (A-D) equals to almost 20%.

Amendments 81 and 82 increase of margin of tolerance **from 10% to 20%** for small pelagic² fisheries (e.g. mackerel, herring, blue whiting, sprat) and **from 10% to 25%** for tuna species (e.g. the pricy bluefin tuna, yellowfin tuna, albacore tuna). Amendment 107 increases the margin of tolerance for transshipments from 10% to 15%. This elevates the risk and magnitude of underreporting and overfishing, with **no risk of sanction** for the operator. In other words, these amendments **legalise underreporting** and **erase almost 40 years** of successive EU Directives and Regulations, by bringing the standards of the European Union on catch reporting and control and on fighting unreported fishing **back to 1983** while fisheries technology on board and equipment allowing the precise estimation of quantities and catch composition have only dramatically increased.

² Small pelagic species account for the top species landed every year in the EU with Atlantic herring amounting to about 800.000 tons, mackerel to 450.000 tons, sprat to 400.000 tons and blue whiting 300.000 tons.

A **margin of tolerance of 20% could lead to 40% of potential underreporting** of catches of small pelagic species, and **a margin of tolerance of 25% could lead to up to 50% of underreporting** of catches of tuna species.

Some examples on specific species:

- ⇒ Catches of mackerel by the EU fleet (average 2017-2018): 445,000 tonnes.
With the proposed amendment, misreporting by operators at almost no risk of being controlled by the authorities could be as high as 178,000 tonnes (40 %).
- ⇒ Catches of yellowfin tuna species by the EU fleet in the Indian Ocean (2019): 72,000 tonnes.
With the proposed amendment, misreporting by operators at almost no risk of being controlled by the authorities could be as high as 36,000 tonnes³ (50 %).
- ⇒ Catches of Bluefin tuna by the EU fleet in the West Atlantic and Med (2019): 16,500 tonnes.
With the proposed amendment, misreporting by operators at almost no risk of being controlled by the authorities could be as high as 8,250 tonnes (50 %).

2. Prevention of illegal discards of fish stocks and sensitive species

What is at stake?

Amendments 120, 121, 124 and 125 will allow illegal discards to continue undetected and threaten the sustainable exploitation of marine biological resources.

EU policy on discards of marine biological resources

Illegal discarding by fishing vessels constitute a substantial waste and is a threat to the sustainable exploitation of marine biological resources.

The obligation to record discards in the fishing logbook has been in force for more than 10 years. However this obligation is generally not respected and it has been practically impossible to enforce.

This is the reason why the reformed Common Fisheries Policy (CFP) in 2013 introduced the **“landing obligation”** as a core element. The landing obligation requires that catches are brought on board fishing vessels, recorded, landed and counted against quotas. This effectively introduces a **prohibition to discard** marine resources⁴ and reinforces the obligation to **record all catches**, including the quantities discarded.

In order to compensate fishers for having to keep on board and land undersize catches⁵, which cannot be marketed for human consumption, substantial **quota increases** were granted.

³ Equalling to

⁴ The landing obligation includes exemption for de minimis quantities, species with high survivability, prohibited species and fish which are predator damaged, which may be discarded. But all those catches must be fully documented in the fishing logbook. There are also thresholds and conditions associated with the de minimis and high survivability exemptions which Member States have a duty to enforce.

⁵ Referred to as below minimum conservation reference size catches.

To date, there is a **widespread non-compliance** with the landing obligation. European Commission audit reports, compliance evaluation reports by the European Fisheries Control Agency (EFCA), Member States' reports and non-governmental agencies reports all indicate that extensive illegal and undocumented discarding continues.

In addition masters of fishing vessels **do not in general comply** with their obligation to record by-catches and discards of **sensitive species, such as marine mammals**.

Why are traditional control tools ineffective?

With traditional control tools these violations get undetected and since the landing obligation was introduced in 2015 there was almost **no confirmed infringements** by any Member State in relation to the illegal/unreported discarding of catches.

Traditional control tools include **inspections at sea**. They only apply to a **small minority** of cases. Operators are **unlikely to discard** illegally **during** an inspection. Inspections at sea cannot control discarding before or after an inspection event and aerial surveillance cannot verify if observed discarding is legal or illegal. Observers on board are not a viable option either, as there is insufficient accommodation space on board most vessel, it would be too costly to deploy observers on large numbers of vessels, they are not active 24h/24 and there are often security issues for the observers on board identifying non compliances.

The **only viable means** for Member States to fulfil their duty to ensure control and enforcement of the landing obligation is by the introduction **closed-circuit television (CCTV)** systems. The use of artificial intelligence would facilitate the reviewing of CCTV footage. The effectiveness CCTV systems has been demonstrated in several Member State trials and is being **increasingly used in fisheries around the world** for a variety of fisheries control issues (Canada, New Zealand, Chile). For this reason, the Commission proposal included **the mandatory, risk based, use of CCTV systems** on certain vessels, as this is the only way for authorities to monitor compliance with the landing obligation, prevent illegal discards and to ensure a level playing field between Member States.

Danger! CCTVs as voluntary tool or imposed as a sanction

Amendments 120-121 and 124 make the use of CCTV systems **voluntary**, meaning that operators would have to accept the CCTVs voluntarily and Member States would be precluded to make the installation of CCTVs mandatory. Amendment 124 requires in addition Member States to provide incentives to operators (extra quotas or free choice of the method in conducting a fishery – thus circumventing other EU rules such as the ban on pulse fishing).

This constitutes a **backtracking** compared to the current CFP rules, which allow Member States to impose CCTVs⁶, should they wish to do so, while not making them a mandatory tool at EU level as proposed by the Commission.

Amendment 125 even proposes to impose CCTV systems **as a sanction** for vessels infringing the rules. But this is illusory, as infringements will never be detected, let alone sanctioned, without CCTV systems.

Why should CCTVs be mandatory for vessels at high risk of discards?

Without this monitoring tool, the landing obligation which was introduced more than 6 years ago, cannot be effectively controlled and enforced and widespread non-compliance will

⁶ No Member State has so far imposed CCTVs in the absence of EU-wide rules applying them to all fleets and ensuring a level playing field.

continue. This **will result** in the continuation of **large scale illegal and unreported discarding** which will lead to overfishing.

To ensure the control of the landing obligation, CCTV systems **must be mandatory** on vessels which are at **high risk of discarding**. The technology is available and the European Fisheries Control Agency (EFCA) has developed a risk assessment methodology and a complete guidance document concerning the technical requirements, the installation and the operation of CCTV systems⁷.

CCTVs systems should be considered as a monitoring tool and **not as a sanction**. Effective control and enforcement of the landing obligation will promote compliance.

Under EMFAF support is available to the costs of the acquisition, installation and maintenance of CCTV systems at a level of 85% and in some cases 100% of these costs.

For these reasons, it is essential that CCTVs systems are installed on all vessels which pose a significant risk of discarding. The technology exists and is continuously improved. Voluntary implementation, as has already been demonstrated, will lead to no result.

3. Control of fishing fleet capacity

What is at stake?

Amendments 134, 135, 136 will limit the possibility to control of the engine power of fishing vessels, leading to an excess in fishing capacity and therefore overexploitation of resources.

What is fishing capacity and why is it important?

In order to avoid overexploitation of marine resources, the CFP foresees that the **capacity of Member States' fishing fleets must be limited and must match the resources available**.

The power of the engine of the fishing vessels is one factor defining fishing capacity in conjunction with gross tonnage, and these indicators are used to establish the size of the EU fishing fleet.

To make sure that the fishing capacity is not exceeded, the power of engines of fishing vessels must be certified and controlled. Operators can be tempted to manipulate the engine to increase its power in order to gain a competitive advantage and to catch larger quantities of fish (and illegally discard them), or to manipulate engine certification documents.

The accuracy of engine power is **crucial** for ensuring that the capacity limits of the Member States fleets are not exceeded, and **avoid overfishing of stocks**.

The results of a recent study conducted by the Commission on engine power⁸ revealed a **widespread non-compliance** with engine power limitations across Member States, areas and

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<https://www.efca.europa.eu/sites/default/files/Technical%20guidelines%20and%20specifications%20for%20the%20implementation%20of%20Remote%20Electronic%20Monitoring%20%28REM%29%20in%20EU%20fisheries.pdf>.

⁸ <https://op.europa.eu/en/publication-detail/-/publication/a867cbac-8e90-11e9-9369-01aa75ed71a1/language-en/format-PDF/source-99423821>.

vessel types, demonstrating a systematic **lack of compliance** on operator level across the fishing sector.

How to best control engine power? Are there EU subsidies?

The physical verification of the engine power is technically difficult and resource intensive for Member States inspectors and as a result rarely performed. A study conducted by the Commission showed that during a period of 5 years (2012-2017), Member States performed only very few physical verifications: 12 out of the 15 Member States included in the study had never performed any physical verification for control purposes, and the limited number of verifications performed during these 5 years (55 in total) were mainly realised in 2 Member States.

For this reason the Commission proposed the installation of **devices to continuously monitor** the engine power.

Under EMFAF, support is available to cover of the costs of the acquisition, installation and maintenance of the continuous monitoring devices at a level of 85% and in some cases 100% of these costs. In the case of replacement of engines supported by EMFAF, the use of the continuous monitoring of the engine power will allow control of the compliance with the conditions of the grant.

Risks ahead

Amendments 134 and 135 significantly **reduce the number** of vessels which will be controlled through a continuous monitoring device to those operating in areas subject to effort regimes (North Sea, Western Mediterranean) and only with a declared engine power > 221kW⁹ and above. This equals to **approximately only 2%** of the entire EU fleet register, against the around 5.5% of vessels proposed by the Commission.

In particular, vessels with an engine power between 120kW and 221kW, as proposed by the Commission, are excluded by these amendments, although they have a significantly higher risk of not complying with the engine power limit. This risk was indeed confirmed by the results of the Commission's engine power study. Amongst the larger vessels (> 221 kW) only a small group will be monitored.

Amendment 136 proposes to use continuous power monitoring as a sanction, although it should be a **monitoring** device.

It is essential that the continuous monitoring of the engine power is introduced for larger sectors of the EU fleet, as proposed by the Commission. This will contribute to preventing overexploitation of marine resources.

⁹ Kilowatt