

# Briefing

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## New rules for managing the EU external fishing fleet

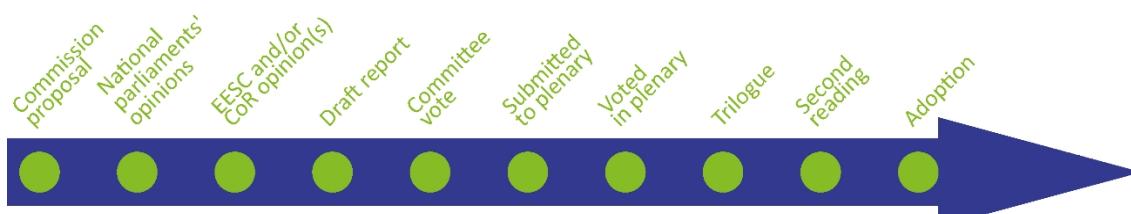
### OVERVIEW

The European Parliament and the Council have adopted a new Regulation on the sustainable management of external fishing fleets, which replaces the 'Fishing Authorisations Regulation' 1006/2008, and covers all EU vessels fishing outside EU waters, as well as third-country vessels fishing in EU waters.

The regulation revised the system of issuing and managing fishing authorisations, so as to improve monitoring and transparency of the EU external fishing fleet. It extended the scope of the authorisation system to include practices such as private agreements between EU companies and third countries, and abusive reflagging operations. Member States are required to authorise fishing vessels using common eligibility criteria, complemented by specific conditions depending on the nature of the authorisation. Part of the electronic fishing authorisations register, showing who fishes for what and where, will for the first time be publicly accessible.

### Proposal for a Regulation of the European Parliament and the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008

<i>Committee responsible:</i>	Fisheries (PECH)	COM(2015) 636
<i>Rapporteur:</i>	Linnéa Engström (Greens/EFA, Sweden)	10.12.2015
<i>Shadow rapporteurs:</i>	Francisco José Millán Mon (EPP, Spain) Ricardo Serrão Santos (S&D, Portugal) Julie Girling (ECR, UK) Izaskun Bilbao Barandica (ALDE, Spain) Anja Hazekamp (GUE/NGL, the Netherlands)	2015/0289(COD) Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly ‘co-decision’)
<i>Procedure completed.</i>	Regulation (EU) 2017/2403 <a href="#">OJ L 347, 28.12.2017, pp. 81-104</a>	



## Introduction

Prior to the adoption of the new Regulation 2017/2403, EU vessels fishing in waters beyond the national jurisdiction of EU Member States, as well as third-country vessels operating in EU waters, were subject to an authorisation procedure defined by the [Fishing Authorisation Regulation](#) (FAR) 1006/2008. This regulation provided the legal framework for issuing and managing fishing authorisations and was part of the control system of the Common Fisheries Policy, along with the [Control Regulation](#) 1224/2009 and the [IUU Regulation](#) 1005/2008.

In 2011, the European Commission proposed to revise the FAR in its [communication](#) on the External Dimension of the Common Fisheries Policy, as part of the overall reform. The Parliament's 2012 [resolution](#) on this communication supported the revision, in particular with a view to addressing the issue of EU vessels temporarily reflagging to a third country to seek new fishing opportunities. The resolution also considered that the external dimension should have a wider scope, to include fishing activities currently not covered, such as private agreements between EU companies and third countries.

Following the 2013 reform of the Common Fisheries Policy, the new [Basic Regulation](#) 1380/2013 introduced the objective that EU fishing activities outside European waters have to follow the same principles and standards as within EU waters, as well as several provisions which are yet to be implemented. In particular, the Basic Regulation requests that efforts are made to monitor EU vessels fishing in non-EU waters outside the framework of bilateral agreements of the EU with third countries (termed 'Sustainable Fisheries Partnership Agreements' – SFPAs). Member States are also expected to collect detailed and accurate documentation of all fishing activities of their vessels outside EU waters. Finally, the Basic Regulation requests Member States to ensure that vessels reflagging to a third country and subsequently returning to the EU fleet operated in a way consistent with EU standards.

In addition, some inconsistencies occurred between the FAR and the Control Regulation, such as different definitions of specific terms (e.g. fishing vessel, fishing activity) or the lack of clarity in using the concepts of fishing licence (which confers on its holder the right to use a certain vessel for commercial exploitation of fisheries resources) and fishing authorisation (which entitles a vessel to carry out specific fishing activities during a given period, in a given area or for a given fishery). The proposed FAR revision was thus expected to address the objectives of the reformed Common Fisheries Policy and to provide consistency with the Control Regulation.

## Existing situation

The EU external fishing fleet is deemed to comprise about 700 fishing vessels, 300 of which fish under EU fisheries agreements.<sup>1</sup> However, different sources provide different figures, depending on the criteria used in the calculation and ultimately on how the term 'external fleet' is defined. The revision proposal did not provide an explicit definition of the external fleet, but used this term to refer to EU vessels authorised to fish outside EU waters.

According to the [Commission](#), the FAR did not allow for identifying and counting all EU vessels fishing beyond EU waters. The [Impact Assessment](#) report accompanying the current proposal considered that part of the EU external fleet operated in a framework that was not properly regulated and did not guarantee transparency, which prevented

the EU from ensuring an exhaustive monitoring of its fleet and hampered its ability to support sustainable exploitation of the fisheries resources concerned.

More specifically, the Impact Assessment showed that the FAR did not have oversight of the conditions under which an EU vessel can fish in third-country waters outside an SFPA, i.e. with a 'direct authorisation'<sup>2</sup> obtained through a private agreement between the EU company and the third-country authorities. In addition, the FAR did not oblige the Member States to inform the Commission of the private agreements of their fishing vessels, but simply encouraged them to do so. In practice, information on private agreements was largely unavailable to the Commission, and even to certain Member States, which prevented efficient control of EU fleet activities. According to the Impact Assessment, this situation concerns an estimated 70-80 EU fishing vessels, which obtain around 150-180 direct authorisations per year.

The authorisation system did not cover either the chartering of EU fishing vessels by a third country, which is a particular form of private agreement. The number of vessels in this situation is limited (several cases per year), but the lack of scrutiny maintained a certain ambiguity, in particular on the fishing opportunities that these vessels use and on monitoring of catch and effort data associated with their activities.

Another issue concerned abusive reflagging. Whereas changing the flag of an EU fishing vessel is not illegal, abusive reflagging designates the practice of changing the flag as a strategy to escape the rules applicable to EU vessels. Several cases have been identified in certain SFPA of vessels that changed their flag when they finished their fishing opportunities so as to continue operating, and then returned to an EU flag a few months later.<sup>3</sup>

The Impact Assessment also identified overlaps between the national and EU services involved in the authorisation procedures, leading to inconsistencies and cumbersome processes. According to this assessment, a number of provisions of the FAR lacked clarity and were inconsistent with other rules, in particular with the Control Regulation. The eligibility criteria for issuing fishing authorisations were judged as incomplete and ambiguous, and have led to different interpretations by different Member States. Certain provisions concerning the authorisations in the framework of EU bilateral agreements were considered imprecise and their application highly complex, in particular those regarding the transition period between the expiration of a protocol and the provisional application of the following one, the reallocation of unused fishing opportunities, and the collection of data on vessel capacity and catches.

### The changes the proposal would bring

The proposed regulation on [Sustainable management of external fishing fleets](#), repealing the FAR, sets new rules for issuing and managing fishing authorisations for EU fishing vessels operating outside EU waters, and for third country fishing vessels operating in EU waters. The proposal drew up the general framework for fishing authorisations, but also clarified that in case of contradiction with 'special rules' which may stem from bilateral or multilateral EU agreements, the special rules would prevail.

Most of the changes introduced by the proposal concern EU vessels fishing outside European waters. In contrast, the rules for third-country vessels fishing in EU waters, which have a more limited scope, were merely adjusted with a view to ensuring that these vessels have the same obligations as EU vessels, in particular as regards the provisions of the Control Regulation.<sup>4</sup>

As regards EU vessels fishing beyond European waters, the core principle of the proposal is that any such vessel, whatever the area and the framework in which it operates, should be authorised and monitored by its flag Member State. The proposal defined common eligibility criteria for all fishing activities out of EU waters, which the Member States must follow when issuing fishing authorisations. Among these criteria, all fishing vessels must provide the information specified in the [annexes](#) to the proposal, they must have a valid fishing licence and they must have not been found guilty of serious infringements during the year prior to the authorisation application. The proposal introduced the requirement that the fishing vessel and any associated support vessel have a number granted by the International Maritime Organization (known as the IMO number), intended to ensure the traceability of the vessel throughout its lifespan.

In the same line of improving traceability, the proposal contains specific provisions on EU vessels reflagging to a third country and returning to an EU flag within two years, with a view to preventing abusive practices which circumvent the conservation and management measures in place.

Member States are in charge of monitoring fishing authorisations. However, in cases defined as 'overriding policy reasons', the Commission might request a flag Member State to deny or withdraw the authorisation. If the Member State fails to comply, the Commission might decide to withdraw the authorisation.

In addition to the common eligibility criteria, the proposal defined specific conditions for authorising EU vessels operating in different frameworks. Basically, fishing activities in waters under the jurisdiction of a third country may take place in the framework of an SFPA with the third state or, if no such agreement exists, under a direct authorisation issued by the third country through a private agreement. When fishing in areas beyond national jurisdiction, EU vessels operate either under the auspices of a regional fisheries management organisation (RFMO) or, if no RFMO is responsible for the fishery in question, on the high seas outside such arrangements.

- For fishing activities in third country waters under SFPA, the proposal requested that EU vessels comply with the conditions of the relevant agreement and with the financial claims of the third country authorities. The proposal also clarified the system of reallocation of unused fisheries resources, aiming to avoid the waste of fishing opportunities.
- As regards fishing activities in third countries' waters taking place under direct authorisations, the proposal introduced a series of new measures intended to ensure that the EU activities do not undermine the sustainability of these countries' stocks. In this case, any EU vessel must have a fishing authorisation from their flag state, in addition to that of the third country. The proposal specified the conditions for Member States to issue such authorisations and indicates how to manage them. It also set rules on chartering of EU vessels by a third country, taking a step towards a legal framework for this practice which has been poorly monitored so far.
- For EU vessels fishing in areas under RFMOs, the proposal largely resumed the current FAR rules, knowing that the newly defined common eligibility criteria apply, and that the Commission can intervene in the authorisation procedure if these criteria are not met.
- The same common criteria also apply in the case of EU fishing vessels over 24 metres in length operating on the high seas outside RFMOs. The flag Member State has to notify the fishing authorisations issued for such vessels to the Commission.

As regards control and reporting rules, the proposal includes the obligation for EU vessels fishing in third country waters under an SFPA to provide declarations of catches and landings to the third country (if so requested in the relevant agreement). The non-respect of this obligation would be considered a serious infringement of the CFP rules. The flag Member States should assess the consistency of these declarations with the data they receive under the Control Regulation.

Finally, the Commission must create and maintain an electronic fishing authorisations register, for information exchange with the Member States. Part of this register would be publicly accessible, providing for the first time open access to information on the name and flag of the vessels, the type of authorisation and the time and zone of the authorised fishing activity.

### Parliament's starting position

On 17 February 2016, the Committee on Fisheries voted on the report on common rules in respect of application of the external dimension of the Common Fisheries Policy, including fisheries agreements ([2015/2091\(INI\)](#)) (Rapporteur: Linnéa Engström Greens/EFA, Sweden). While the report addresses the wider topic of the external fisheries dimension, several recommendations of the Committee concern specific aspects of the Commission proposal.

As regards private agreements between EU and third countries that involve access to third-country fisheries, the report expresses concern that the Commission is not systematically notified of such agreements, which are currently outside the scope of the Common Fisheries Policy and could lead to unfair competition with the local fishing communities and with EU ship owners operating under EU agreements. The report requests the Commission to set up a database covering all private agreements, including conditions for access, fleet capacity, vessel identity and the resulting fishing activities. This database should be in the public domain, with the exception of those parts which contain commercially sensitive information.

In relation to abusive reflagging, the report notes that the Basic Regulation requirements should be strengthened such that a vessel's complete flagging history must be submitted to the Commission and included in the Community Fleet Register database prior to the vessel's acceptance in the register.

EU vessels fishing under the provisions of an SFPA which do not supply their flag state with the data required under the terms of their fishing authorisation should be subject to the penalties foreseen by the Control and IUU Regulations including, where appropriate, denial of a fishing authorisation.

In connection with the proposed fishing authorisation register, the report supports systematic publication of the names of EU-flagged vessels granted authorisation to fish outside EU waters, including data on their activities and catches.

Finally, the report considers that the lack of a definition of the EU external fleet prevents the analysis of the fleet's size and limits transparency. The report supports a definition which would include all vessels operating outside EU waters.

### Advisory committees

On 25 May 2016, the European Economic and Social Committee (EESC) adopted an [opinion](#) (Rapporteur: Gabriel Sarró Iparraguirre, Various Interests – Group III, Spain), supporting the objectives pursued by the proposal. However, the EESC expressed the

view that the proposal was likely to place an excessive administrative and bureaucratic burden on the Commission, Member States and operators, and called for sufficient budgetary and human resources in the Commission and in Member States' supervisory authorities. The EESC was in favour of the responsibility for the fishing authorisation procedure falling to the Member States, while allowing the Commission to verify the validity of the authorisation based on eligibility criteria. As guardian of the Treaties, the Commission has to ensure that Member States fulfil their obligations.

## Legislative process

On 28 June 2016, the Council agreed on a general approach on the proposal, supporting the broadening of its scope to issues such as direct authorisations, chartering and reflagging, and endorsing the proposal as regards the fishing authorisation register.

Meanwhile, the Parliament's Committee on Fisheries (PECH) discussed the proposal on the basis of the draft report by Linnéa Engström (Greens/EFA, Sweden), with the Committee on Development (DEVE) providing an opinion. On 5 December 2016, the PECH committee adopted its [report](#) by 22 votes to 1, supporting the proposal, which it expects to improve the management of the EU external fleet, and to create a level playing field for all fishing activities conducted under the EU flag.

On 2 February 2017, the Parliament approved its [resolution](#) in plenary at first reading by a large majority (586 votes to 56, with 6 abstentions), and on 28 February 2017 the PECH committee adopted a decision to open interinstitutional negotiations. The Council's Coreper agreed on a mandate for negotiations on 8 March 2017.

After three trilogue meetings, on 20 June 2017, the Parliament and the Council reached a provisional agreement, which was approved by the PECH committee on 12 July 2017. As Council's first-reading position, adopted on 17 October 2017, was in conformity with the agreement reached in trilogue, the PECH committee voted, on 21 November 2017, on a draft recommendation to the plenary to approve Council's position at first reading without amendment.

Among other things in the agreed text, the Parliament introduced stricter rules for EU vessels **transhipping** at sea (i.e. unloading catches from one vessel to another), in the framework of direct authorisations and on the high seas, requiring prior notification and annual reporting of such operations. As regards **reflagging**, Parliament supported provisions for better information and consistency with the IUU Regulation, with vessels receiving authorisation only if they have not engaged in IUU fishing, nor operated in a non-EU country listed or identified as uncooperative under the IUU Regulation. The Parliament also required that operators fishing under direct authorisations provide a **scientific evaluation** demonstrating the sustainability of the planned activities. The agreement limits the Commission's power to intervene in the **withdrawal of authorisations**, to cases of contravention of measures adopted by regional fisheries management organisations or under EU fisheries agreements. In terms of transparency, more information will be included in the public part of the **fishing authorisation register**, such as the International Maritime Organization (IMO) number – which ensures the traceability of a vessel throughout its lifespan, along with the type of authorisation, including the species targeted, and the authorised time and area of fishing activity.

The European Parliament adopted the text on 12 December 2017, and the final act was signed the same day. The new regulation was published in the Official Journal on

28 December 2017 as [Regulation \(EU\) 2017/2403](#), and entered into force on 17 January 2018.

## EP supporting analysis

EPKS [Implementation appraisal Council Regulation 1006/2008 on fishing authorisations](#), Lorna Schrefler, December 2015.

EPKS [Initial appraisal of a European Commission Impact Assessment](#), Sustainable management of external fishing fleets, Alina-Alexandra Georgescu, April 2016.

EPKS In-depth analysis [Beyond the European seas: The external dimension of the Common Fisheries Policy](#), Irina Popescu, November 2015.

## Other sources

[Sustainable management of external fishing fleets](#), European Parliament, Legislative Observatory (OEIL).

[Common rules in respect of application of the external dimension of the Common Fisheries Policy, including fisheries agreements](#), European Parliament, Legislative Observatory (OEIL).

## Endnotes

<sup>1</sup> Source: [European Commission](#) press release, 10 December 2015.

<sup>2</sup> 'Direct authorisation' is a new term introduced by the current proposal, which defines it as 'a fishing authorisation issued by a third-country competent authority to a Union fishing vessel outside the framework of a sustainable fisheries partnership agreement'.

<sup>3</sup> The EU sustainable fisheries partnership agreements include an exclusivity clause, i.e. if the EU has such an agreement with a third country, EU vessels cannot operate in the third country's waters outside the framework of this agreement. This clause also applies if no protocol is in force for the agreement in question, or if EU vessels are chartered by a non-EU country (see European Court of Justice Case [C-565/13](#) of 9 October 2014).

<sup>4</sup> Third-country vessels fishing in EU waters mainly include Norwegian and Faroese vessels in the framework of reciprocal access Northern Agreements, Venezuelan vessels in French Guyana waters and, since 1 January 2014, several vessels from the Seychelles fishing in the waters of Mayotte.

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