



Mr Joao AGUIAR MACHADO
Director General
Directorate General Maritime Affairs
and Fisheries
Rue de la Loi 200
1049 Brussels
BELGIUM

Pelagic AC
Louis Braillelaan 80
2719 EK Zoetermeer
The Netherlands

Tel: +31 (0)63 375 6324
E-mail: info@pelagic-ac.org
<http://www.pelagic-ac.org>

Date: July 18th 2019
Our reference: 1819/PAC78
Subject: Pelagic AC recommendations on the Commission proposal on the revision of the Control Regulation (COM/2018/368 – 2018/0193)

Dear Mr. Aguiar Machado,

Thank you very much for the opportunity to comment on the European Commission proposal on the revision of the Control Regulation. I am pleased to submit in Annex I the Pelagic AC recommendations on the proposal which have been unanimously approved by the Executive Committee.

In case you have any questions, please do not hesitate to contact the Secretariat.

Looking forward to your response,

Kind regards,

A handwritten signature in blue ink that reads 'Jesper Raakjær'.

Jesper Raakjær
Chairman Pelagic AC



Annex I

Recommendations on the Commission proposal COM/2018/368 – 2018/0193 for a revision of the Control Regulation

July 2019

Introduction

The Pelagic AC wishes to provide comments on the Commission's proposal for a Regulation amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control (COM/2018/368 final – 2018/0193 (COD)).

This document builds upon our previous recommendation dated February 5th 2018 (reference 1718/PAC102) which was prepared in light of the Commission consultation on the revision of fisheries control system. The reform of the Common Fisheries Policy (CFP) and particularly the introduction of the landing obligation, requires the establishment of a new, transparent, easy to understand and above all equitable control system. A revision of the current Control Regulation is urgently needed to align this Regulation with the CFP and to ensure a coherent regulatory framework that supports the sustainable exploitation of marine resources.

The Pelagic AC recognizes the Commission has undertaken a re-alignment process aimed at bridging the gaps and addressing weakness identified in the consultation document and impact assessment, as well as aligning the Control Regulation with other relevant legislations. As such, the Pelagic AC welcomes some of the proposed amendments in the Commission proposal. Nevertheless, the Pelagic AC notes that the Report from the Commission to the European Parliament and the Council on the Implementation and Evaluation of the Regulation 1224/2009, drafted in the context of the Refit exercise evaluating the impact of the fisheries regulation, states that *“the evaluation was carried out according to the five criteria of relevance, EU added value, coherence, effectiveness and efficiency set out in the Commission's Better Regulation Guidelines of May 2015”*. The Pelagic AC questions the veracity of some of these assertions, for reasons explained in more detail below.

The Pelagic AC greatly appreciates DG Mare's engagement and guidance during our Control Focus Group meeting held on 25 January 2019. The following advice has been produced as a result of this interaction.

The Pelagic AC hopes that this advice will help to inform the discussions on the revision of the EU Fisheries Control System and provide material for further reflection. The Pelagic AC is aware of the state of play regarding the inception of a new European Parliament and hopes that this advice will be taken onboard in the next steps of the co-decision process.

General remarks

The Pelagic AC fully recognises that effective arrangements for monitoring, control and enforcement are an integral part of any functioning sustainable fisheries management system. Nonetheless, there should always be proportionality between control measures, sanctions and the level/scale of risk.

The Pelagic AC would like to highlight that, while the existing Control Regulation does have some shortcomings, many of the problems stem from a lack of implementation and enforcement at Member State level and this must be addressed in the first instance, in parallel to the current work on the revision of the Control Regulation.

As a general observation, members of the Pelagic AC are aware that the Commission has revised the Control Regulation in light of the Lisbon Treaty. This results in the introduction of a new division between delegated acts, which appear to have been prioritised in the current proposal, and implementing acts in the Regulation, which did not exist before. The Pelagic AC will comment on those instances where members question whether these new provisions are justified.

As a general remark in relation to data, given the sensitivity of some data from a market perspective (such as logbook or gramme size data), the Pelagic AC is of the opinion that, when there is no overriding public interest in the disclosure of data, it should be, to the extent appropriate, treated confidentially in accordance with GDPR requirements and made available to the control authorities and for risk analysis purposes¹. The Pelagic AC supports that data is made available for scientific purposes. Note that in order to avoid repetition, the Pelagic AC comment related to data confidentiality applies to all relevant articles (articles 14, 25a, 74, 95, 109 to 111).

The Pelagic AC members are of the view that reporting, monitoring and control requirements shall be harmonized across the EU in order to ensure a level-playing field and guarantee a fair treatment for all fishers. The Pelagic AC points out that appropriate funding, such as through EMFF, is available in Member States for reporting, monitoring and control requirements as well as for investments in weighing equipment at landing sites.

In addition, the Pelagic AC calls for the reporting, monitoring and control requirements as set out in this proposal to be extended to third country vessels that operate in Union waters. This comment is particularly relevant to articles 9, 14, 25a and 91a.

All Union fishing vessels must respect international conventions when they operate in international waters and the Control Regulation applies without prejudice to the other commitments adopted at the international level by the EU.

In terms of simplification and clarity, the Pelagic AC is of the opinion that all control rules should be contained in the Control Regulation.

The recommendations from the Pelagic AC follow an article by article approach, with special attention given to the following topics (though not limited to these articles):

Subject	Articles in the Commission proposal
Data: availability quality and sharing	Articles 4, 6, 9, 10, 14, 15, 19a, 20, 23, 24, 33
Control of the landing obligation	25a, 73
Fishing capacity & engine power	38, 39a
Post landing activities	59a, 60, 60a, 68
Enforcement, sanctions, infringements	74, 76, 77, 79, 89, 90, 91, 91a, 92, 92a, 93, 95, 104, 105, 106, 109

¹ Pelagic Advisory Council (2015). 1516 PAC 12: Recommendations on control of the Landing Obligation. <http://www.pelagic-ac.org/media/pdf/1516PAC12%20Recommendations%20on%20control%20of%20LO.pdf>

Detailed recommendations

Data: availability, quality and sharing

Article 4 Definitions

- The newly introduced definition of ‘slipping’, i.e. “the practice of intentionally releasing fish from fishing gear...” (paragraph 33) seems to suggest it is prohibited in all circumstances and ignores the intentional release of fish in pelagic fisheries when unwanted catches of forbidden/endangered species are caught. The Pelagic AC is of the opinion the definition should not contradict these circumstances.
- The amended definition of fishing vessel to ‘catching vessel’ (paragraph 34), narrows down the activities of the vessel to the capture of fish only, while in the current definition fishing vessels also include transport/reefer vessels. If this new definition implies that reefer vessels are also considered ‘catching vessels’, this would mean that capacity limits would apply to transport vessels as well, while this isn’t the case in the current situation. The Pelagic AC therefore asks for clarification whether this new definition will extend capacity limits to transport or reefer vessels.

Article 6 Fishing license

There is some ambiguity in the interpretation of the new provision laying down rules by implementing acts on validity of fishing licenses and minimum information required (paragraph 5). Currently this is a competence of Member States but it is unclear whether this remains to be the case or whether provision 6(5) undermines this competence. The provision also appears to contradict the provision under paragraph 3, stating that Member States shall suspend fishing licenses. The Pelagic AC would appreciate clarification whether this new provision changes the current situation with regard to the way fishing licenses are issued.

Article 9 Vessel Monitoring Systems (VMS)

- With regard to making available vessel position data, the wording in paragraphs 4 and 6 are inconsistent and ambiguous in terms of the applicability of the same requirements to third country vessels or EU vessel operating in third country waters. The Pelagic AC is of the opinion third country vessels should operate in the same way as Union vessels when operating in Union waters, and that data should be reported to third countries in the same way. The text should reflect the current situation.
- Paragraph 7 introduces a provision for the Commission to adopt detailed rules for the monitoring of fishing activities and fishing effort by fishing monitoring centers, as regards the responsibilities of the masters concerning VMS devices. This paragraph suggests that the Commission could impose sanctions on masters directly, which to our knowledge would not be possible from a legal point of view. The Pelagic AC would appreciate if the Commission could confirm that the current legal situation has not changed.

- It is unclear whether the Commission can decide unilaterally on rules regarding an appropriate frequency of transmission of the VMS data (paragraph 8c). The Pelagic AC would appreciate clarification on if- and on what basis the Commission will decide such rules.

Article 10 Automatic Identification System (AIS)

The Pelagic AC would like to request clarification on the purpose of having this provision included in the fisheries Control Regulation.

Article 14 Fishing logbook

The Pelagic AC supports the process developed by the European Commission in its proposal. In its previous recommendation from February 2018, the Pelagic AC has already stressed the importance of setting a mandatory collection and recording of data for control and suggested the method of gramme sizes:

[Extract from February 2018 recommendations]:

“The Pelagic AC considers the haul by haul collection and transmission of real-time gramme size data an effective tool in securing both real time, at sea and at landing, monitoring of fishing operations. Collection of and collection protocols for registering gramme size data provide the essential tool for risk analysis and risk profiling. The Pelagic AC recommends that a risk based system centered around the collection and haul by haul transmission of gramme size information should be mandatory for all fleets involved, both EU third and country vessels operating in Union waters.”

- Paragraph (2f) is amended to replace the mandatory recording of ‘mesh sizes’ to ‘technical specifications’. It is unclear to the Pelagic AC what the purpose is of this change, and requests clarification from the Commission if the status quo with regard to trawling gear will remain the same.
- Paragraph 2(g) is amended to specify that the logbook information shall be provided **per haul**.

It should be noted that in pelagic fisheries fish is pumped from the net directly into the tank at an average speed of 15 tons/minute. Large bycatch (such as some of the ETP species) cannot enter the pump. With random sampling, an estimate of small bycatches cannot be given with accuracy until the fish is sorted at the factory. Quantifying accurately individual species of bycatch on a haul by haul basis is therefore not possible in the case of pelagic fisheries. The information can be provided at factory level (depending on the vessel type either on land or on the vessel itself), but not from the fish tank. Data from the random sampling can also be made available to ensure fully documented fisheries.

- With regard to paragraph 4, the Pelagic AC restates its previous reservations to the 50kg threshold and the margin of tolerance as stated in its February 2018 recommendation:
 - *“The threshold of 50 kg live weight of each species to be estimated and recorded in the logbook within a +-10% limit by masters of the fishing vessels when caught and kept on board is feasible to comply with in most fisheries where catches are sorted and boxed.*

- *However in those fisheries where the catch is stored fresh and unsorted in bulk in refrigerated tanks on board the fishing vessels, e.g. catches of pelagic and forage species, it is impossible for the masters to accurately estimate the catches of each species in this lot of mixed fresh fish.*
- *Complying with the threshold and the tolerance on the logbook estimate even if a sampling is carried out on board the vessel is impossible. Sampling at sea is seldom used by the inspection authorities as it is known to be less accurate than sampling in port and during the landing. And it will in most cases not reflect the actual catch composition.*
- *In order to correctly sample a 50kg by catch of e.g. mackerel in a total catch of 1.000 t of herring, the master would have to take a sample of 500.000 kg. (50% of the catch) in order to be within the +/-10% tolerance. This is practically impossible.”*

Article 15 Electronic submission of the fishing logbook

According to article 15, the logbook requirements must be submitted electronically at least once a day, and where applicable, **after each haul**.

It is current practice in freezer trawlers to submit the catch data every 24 hours after freezing in the factory production phase, because the exact figures can only be estimated after the freezing step, to which a correction is applied. Apart from this, it often happens that a haul is caught on day one and is processed the next day.

Up to five hauls can occur within 24 hours, which would mean 5 corrections should be applied. The new requirement poses practical problems in those cases but isn't a particular problem for RSW fresh fish vessels.

Article 19a Prior notification of landing in third country ports

The wording in paragraph 4 suggests Union vessels have to obey the rules of the CFP even when they are fishing in third country waters. The Pelagic AC believes the wording should be adjusted to specify that while fishing in third country waters, in cases where CFP rules contravene with third country rules, third country rules must be followed. The Pelagic AC therefore recommends adding the following words to article 19a(4):

“...There are reasonable grounds to believe that the fishing vessel is not complying with the rules of the common fisheries policy, or **where relevant**, the competent...”

Article 20 Transshipment declaration

In order to apply for authorization to transship, paragraph 2b states that a transshipment declaration should be submitted to their flag Member State at least 3 days prior to the planned transshipment. 3 days can pose a problem for some pelagic fisheries in the Pacific. It may happen that it takes reefer vessels longer than 3 days to transship because they travel over long distances or encounter weather circumstances. The Pelagic AC would like to ask the European Commission how this problem could be addressed in practice given the specificities of pelagic fisheries.

Article 23 Landing declaration

With regard to paragraph 2(d), the Pelagic AC supports the EC proposal and refers to its position in relation to weighing requirements (from February 2018) which are covered in articles 59, 60 and 60a.

Article 24 Electronic submission of the fishing logbook

With respect to paragraph 2(b), the Pelagic AC repeats the same comment as the previous article.

Control of the landing obligation

Article 25a Control of the landing obligation

Given an adequate risk assessment, the Pelagic AC fully supports that vessels at risk of non-compliance need to have additional mandatory control tools such as specified in article 15 of the CFP, which includes CCTV. However, based on previous discussions held with the Regional Groups, the Pelagic AC reminds that current risk analyses are based on the characteristics of the vessel (vessel size, gear type etc.), and do not take into account that the risk is actually the behaviour/activity undertaken by the skipper and crew. The Pelagic AC believes that risk analysis needs to ensure that there is a needed level playing field in the establishment of the necessary measures to control the implementation of the landing obligation.

- With respect to paragraphs 1 and 2, the Pelagic AC reiterates comments made in its previous recommendation (February 2018):

“Requiring CCTV on vessels purely because they have the potential to discard large quantities of fish is discriminating operators for reasons of convenience. An operator of a large pelagic vessel is no more likely to discard fish than a small-scale vessel operator. On the contrary, small-scale operators are more affected by the economic consequences of the landing obligation and therefore more likely not to comply with the rules. Rather than applying measures that put any large-scale operator under general suspicion, a fair and uniform control system should be developed and applied. For the Pelagic fleet, the Pelagic AC thinks that such a system could be supported by the mandatory collection and recording of gramme sizes. The Pelagic AC has already recommended that real-time information on gramme sizes in the mackerel fisheries is a powerful control tool and advises that a system based on the collection and haul by haul transmission of gramme size information should be mandatory for all fleets involved, both EU and non-EU².”

The Pelagic AC reminds the Commission that previous work has been carried out on other risk assessment tools in light of the landing obligation, notably the recording of gramme sizes. If on that basis a ‘high risk’ vessel is identified, the Pelagic AC believes an additional set of measures can be imposed on that specific vessel. The Pelagic AC views these measures are part of a package, that may include CCTV, but also onboard observers, VMS and onshore controls amongst others.

Article 33 Recording of catch and fishing effort

Article 33 lays down rules for Member States to provide the Commission catch (stock quantities) and effort data. Paragraph 3 states: *“In cases where the data submitted are estimates for a stock or group*

² Pelagic Advisory Council (2015). 1516 PAC 12: Recommendations on control of the Landing Obligation. <http://www.pelagic-ac.org/media/pdf/1516PAC12%20Recommendations%20on%20control%20of%20LO.pdf>

of stocks, the Member State shall provide to the Commission the corrected quantities established on the basis of landing declarations as soon as available and no later than 12 months after the date of landing.”

The Pelagic AC assumes the estimates in paragraph 3 only relates to non-TAC/quota species, since the figures for TAC/quota species will already be definite within 12 months. In addition, the Pelagic AC questions the length of the 12 months period after the date of landing that Member States have to correct the data (paragraph 4), which seems like a very long period.

Article 35 & 36 Closure of fisheries

The Pelagic AC has some concerns with regard to articles 35(2) and 36(2). These articles seem to suggest that the Commission can close a fishery or an area when quota are exhausted or a maximum fishing effort has been reached. Considering an example of a horse mackerel fishery in the West of Ireland area: if the horse mackerel quota is exhausted, following this wording the Commission could close down the area by means of implementing acts, while there could still be possibilities to fish for boarfish, for example. Under the landing obligation this scenario could imply the closure of the horse mackerel fisheries if there is exhaustion via bycatch. The Pelagic AC is therefore concerned that ‘closure’ of an area stands on its own for all activities.

Can the Commission explain what exactly is meant by ‘closure’? Does it refer to all fishing activities in an area or to the specific species in question?

Fishing Capacity & Engine Power

Article 38 Fishing capacity

With respect to paragraphs 1 and 2, the Pelagic AC reiterates comments made in its previous recommendation (February 2018):

“Measuring fishing capacity has always been, and still is, very elusive and difficult to quantify, because a vessel’s capacity strongly depends on non-numeric factors, such as electronic equipment and knowledge of the fishing grounds (Penas Lado, 2016³). Nevertheless, the monitoring of fishing capacity is of importance, especially where species are not under the TAC regulation, which does not apply to the stocks under the remit of the Pelagic AC at present, and policy makers agreed on two easily quantifiable criteria to determine a fleet’s fishing capacity: vessel engine power in kW and gross tonnage (GT).”

Furthermore, the European Court of Auditors in [its 2011 report](#) pointed out that:

“There are examples of fleets which represent exceptions to these general problems, whose capacity in terms of GT and kW greatly exceeds that necessary to harvest the available quota (for example certain large-scale pelagic fisheries in the north-east Atlantic) but which can operate profitably while targeted fish stocks remain within sustainable limits.”⁴

³ Ernesto Penas Lado (2016). The Common Fisheries Policy: The Quest for Sustainability. Wiley-Blackwell.

⁴ European Court of Auditors (2011). Special Report No 12: Have EU measures contributed to adapting the capacity of the fishing fleets to available fishing opportunities?

A more recent special report from the [Court of Auditors from 2017](#)⁵ has expressed criticism towards Member States for not properly enforcing the rules in the Control regulation in relation to monitoring, verification and licensing of engine power. The Pelagic AC would like to further highlight the need for proper enforcement of the current rules .

Based on these findings, the Pelagic AC requests clarification on the need for additional methods to measure engine power as described in article 39a continuous monitoring of engine power. Recognizing the need to maintain the balance between fleet capacity and fishing opportunities, the Pelagic AC recommends that adjustments and management of the capacity as set out in article 22 of the CFP is the way forward.

Article 39a Engine power

Referring back to the comments made in the previous article (38), the Pelagic AC reiterates that measuring of engine power cannot be the only parameter to measure fishing capacity, and proposes to follow article 22 of the CFP as the way forward (see comments for above article).

Article 48 Lost gear

If lost fishing gear cannot be retrieved, article 48(3) requires masters of fishing vessels to record information about the lost gear in the logbook. For practical reasons, the Pelagic AC asks for clarification where in the logbook this information should be recorded. With regard to recording the time of the loss of gear, the Pelagic AC would like to note that there may be a gap between the actual loss of gear and the moment when the loss is noticed. The Pelagic AC seeks clarity on the application of this provision.

Article 49c Landing of catches below the minimum conservation reference sizes

In article 49a, a derogation applies to the separate storage of catches below the minimum conservation reference size, where catches contain more than 80% small pelagics. In article 49c, this derogation for pelagic fisheries is not mentioned in the context of the landing catches that are below the minimum conservation reference size. The Pelagic AC requests for clarification that the derogation still applies to pelagic fisheries and that the status quo will not change.

Article 55 Control of recreational fisheries

The Pelagic AC agrees with the need and calls for further control measures in recreational fisheries, and reiterates comments made in its previous recommendation (February 2018):

*“The Pelagic AC is of the opinion that catches from recreational fisheries cannot be sold, as this is considered an illegal act according to Article 55(3). In some Member States however, marketing of catches is not considered to be the same as the sale of catches. To avoid confusion, the Pelagic AC fully supports that the wording of Article 55(3) is amended to **‘the sale** of catches from recreational fisheries shall be prohibited’.”*

⁵ European Court of Auditors (2017). Special Report No 8: EU fisheries controls: more efforts needed

The Pelagic AC further requests that unambiguous definitions of ‘recreational’ and ‘commercial’ fishing activities are stipulated.

Articles 56 to 58 Marketing of fishery products and traceability

The Pelagic AC views this topic to be under the scope of the Market Advisory Council (MAC), hence it refers to the detailed recommendation from the MAC on these articles.

Post landing activities

Article 59a, 60 & 60a Weighing systems

The Pelagic AC reiterates comments made in its previous recommendation (February 2018):

“The Pelagic AC would like further clarification as to why weighing currently represents a problem and questions whether there is an issue with the implementation and enforcement of the current regulation or whether there is a problem in a specific area.

The Pelagic AC strongly advises the Commission to consider the logistic dimension for the Pelagic fleet of the proposed actions, which may:

1. *Limit the landing of catches to a small number of ports in a Member State,*
 2. *Create additional costs associated with new equipment and the training of personnel,*
 3. *Delay distribution, as each (set of) fish box(es) has to be weighed after landing.”*
- The Pelagic AC recalls that article 54 of the current Commission implementing regulation (404/2011), states that the landing operation shall be regarded to have been completed when the fisheries products are transported from the place of landing before they have been weighed. The Pelagic AC would like to request clarification whether this article still applies or whether the new weighing provisions repeals this article.
 - The industry members of the Pelagic AC currently have weighing systems in place that work well and that fall under Coastal States agreements. The industry therefore has reservations about these new requirements and ask to maintain the status quo, especially if it is unclear if the current rules are being properly enforced.
 - With regard to the derogation in article 60(5) for unsorted catches, the Pelagic AC requests clarification whether this derogation implies that not all quantities should be weighed on species level.
 - In the case of landing unsorted fish, not destined for human consumption, the Pelagic AC proposes to strengthen the requirements such that weighing systems used are certified by a third party to ensure a level playing field in Europe.

Article 68 Transport documents

- The wording in Article 68 (3) implies that the responsibility for the accuracy of the content of the transport document is assigned to the transporter. The transporter is the logistical

interface between the master and the buyer, and hence plays no role in the transaction process. It therefore does not make sense to assign responsibility to this party as this would involve an unjust shifting of liability. Furthermore, imposing additional burden on the transporter to verify the weighed quantities is both time consuming and unrealistic. The Pelagic AC requests to adjust the wording in this article such that the master remains responsible for the accuracy of the transport document.

- Article 68(5) allows for authorities to grant exemptions from the obligation to issue a transport document covering the fisheries products and the quantities transported, when the fish are transported to an area within 20 km from the place of landing. The Pelagic AC wonders what this distance is based on, and suggests the possibility for derogations with case by case flexibility in the application of this maximum distance as some factories in the UK for example, can be located farther than 20 km (i.e. 27 km) from the landing area.

Article 73 Control observers

- The Pelagic AC requests clarification for what is meant with ‘a two-way communication device’ that is independent from the vessel at sea, such as stated in in article 73(2e). Does the article imply an extra device is needed? The Pelagic AC agrees that devices are needed to ensure the safety and security of control observers on board fishing vessels, but requests clarity on how authorities envisage this system working.
- The Pelagic AC recommends adjusting paragraph 9 such that implementing acts may be adopted instead of delegated acts. This paragraph concerns new rules that fall under the competence of Member States, as such any eventual new acts should be adopted in conjunction with Member States.

Enforcement, sanctions, infringements

Article 74 Conduct of inspections

With regard to inspections, the Pelagic AC refers to its previous comments on CCTV as explained under article 25a.

Article 76 Inspection report

Article 76(2) does not give a time limit for officials to communicate their findings to operators. The Pelagic AC is of the opinion that if any discrepancies between the findings of the masters and the officials exist, it is important for masters of vessels to be notified straight away, if it does not compromise the safety and security of the official in charge of the inspection. The Pelagic AC suggests to add the wording ‘without delay’ such as in the previous paragraphs, instead of the 15 working days mentioned in paragraph 3.

Article 77 Admissibility of inspection and surveillance reports

The Pelagic AC agrees with the article as drafted. However, the Pelagic AC notes that proceedings after alleged infringements and sanctions differ throughout the European Union: for the same infringement the sanction may be either administrative or penal depending on the Member State involved and in either case the level of sanction may differ between Member States and may also differ between fleets dealt within a Member State. The Pelagic AC recommends to standardize this across Member States.

Article 79 Union inspectors

Paragraph 5 states that inspectors cannot operate in countries other than their **country of origin**. In the way this paragraph is phrased, it suggests inspectors are restricted in their enforcement powers, based on their **nationality**. It should be specified that inspectors are bound to their local jurisdictions, and that inspectors do not have the authority to carry out enforcement duties on behalf of agencies in another Member State.

Articles 89 and 91 Sanctions & immediate enforcement measures for serious infringements

The Pelagic AC appreciates the attempt by the Commission to ensure a common treatment of prosecution across Member States, and supports additional requirements for Member States to ensure those that are in breach of the rules in the CFP are held liable.

Bearing in mind that there is no common legal system in the EU, sanctioning falls under the competency of Member States. The Pelagic AC requests clarification from the Commission that article 89(1) does not supersede national competency.

The Pelagic AC encourages Member States to seek agreements amongst each other over harmonized measures and sanctions to ensure a level playing field across the EU, but points out the practical limitations of applying immediate enforcement measures, given the ambiguity in the way the word 'suspected' is written in article 91, paragraph 1: "*Where a natural person is **suspected** of having committed or is caught in the act while **committing** a serious infringement or a legal person is **suspected** of being liable for such a serious infringement, Member States...*"

Article 89 provides for immediate enforcement measures to individuals that according to article 91 need only be suspected of committing an infraction. This would imply sanctions are applied without proof. The Pelagic AC would appreciate clarity from the Commission in terms of the legal implications of this paragraph in cases where there are disagreements between Member States with prosecuted vessel owners or masters of vessels.

Furthermore, the meaning of the word 'suspected' may be interpreted differently according to the judicial systems in different Member States. The Pelagic AC suggests to remove the word 'suspected' from this article and asks for the proposal to clarify that 'suspicion' and 'committed' have two very distinct meanings.

Article 90 Serious infringements

The Pelagic AC appreciates the effort by the Commission to define what constitutes a serious infringement, in order to secure a level playing within the EU.

- The Pelagic AC agrees that officials and observers should be facilitated from carrying out their duties and should be protected in doing so. However, the Pelagic AC requests clarification over the meaning of the words ‘concealing’ (2b) and ‘obstruction’ (2d).
- The Pelagic AC further advises to replace the word ‘obstructed’ (2e) by ‘prevented’ (referring to officials being prevented from carrying out their duties) in order to avoid confusion over more minor cases of obstruction.
- Finally, the Pelagic AC assumes paragraph (2q) on the manipulation of engine power or monitoring devices, does not apply to for pelagic fisheries in light of the findings in the report from the [Court of Auditors \(2011\)](#).

Article 91a Sanctions for serious infringements

- The Pelagic AC welcomes this article laying down sanctioning levels for serious infringements, and appreciates the effort from the Commission to create a level playing field in the EU with regard to the level of sanctioning that is applied. Paragraph 1 defines the minimum and maximum values of the fines in case of established serious infringement. The Pelagic AC would like more clarity in relation to:
 - Whom the fine will apply to: the master or the vessel owner, or both?
 - How the minimum and maximum values of the fine are defined
- The Pelagic AC has some concern over paragraph 3, which indicates the multiplying factors for fines as based on the value of products as derived from the EUMOFA pricing database. The prices of fisheries products in the EUMOFA database are based on fresh landing, while in pelagic fisheries different prices can apply because products are frozen on board (such as the case with freezer vessels). The price difference for the two types of products is significant, therefore the Pelagic AC asks the Commission to take this difference into account to avoid a disproportionate and unfair fining system for fish that is landed frozen.
- Finally, the Pelagic AC would further like to stress the need for an equitable level of sanctioning for infringements applicable to third countries, like Norway and the Faroe Islands, operating in EU waters.

Article 92 Point system

- The Pelagic AC appreciates the efforts from the Commission to harmonize the point assignment system in the EU, such as by setting a maximum limit that can be dealt per infringement (max 18 points paragraphs 5 & 6). However, the Pelagic AC would like to highlight that there will always be room for interpretation in terms of how the point system is applied. A level playing field remains difficult to capture in legislation. For this reason, the proposal of the Commission to further harmonize the criteria used to determine if an infringement is serious or not, is welcome.
- The Pelagic AC seeks clarity as to where the points are attached to: to licenses or to vessels? Paragraph 2 mentions points are assigned to the holder of the fishing licence for the fishing

vessel, which can have consequences. If a suspension occurs on vessel level, that means the vessel is blocked even if it operates under different licenses. If a vessel is later sold under two licenses, will doubling of the sentence apply? Can the vessel be sold and used under another license? The Pelagic AC would appreciate clarity on this.

- The Pelagic AC requests further clarity on the appointment of the penalties in the case where the master and licence holder are the same person: will double points apply to the same person? Whereas Article 92(2) specifies that in case of a serious infringement, penalty points shall be assigned to the holder of the fishing licence, these points shall be transferred to any future holder in case the vessel is sold, transferred or otherwise changes ownership after the date of infringement. Article 92(6) specifies a point system should be established to assign the appropriate number of points to the master of a vessel, as a result of a serious infringement committed by him. A situation where a person gets double points for being both master and shipowner must be clarified.
- Paragraph 3 specifies that points are attached to the license holder and will be transferred to any new holder of the license when the vessel changes ownership. In Ireland the situation is such that the points are attached to capacity. If capacity is sold to three new owners: does that mean that each new owners all get the same number of points? The same question applies for paragraph 5: will double points be assigned if two infringements are committed?
- The Pelagic AC requests clarification in relation to paragraph 8 which mentions that all points can be deleted within three years if no serious infringement has been committed. It should be made clear that the same applies to paragraph 3 when a license is transferred. If on the last day of this period an offence is committed, existing points do not expire but are carried forward. Potentially this could lead to an excessively long suspension.
- The Pelagic AC appreciates and supports the attempt by the Commission to secure a level playing field in the sanctioning systems across the EU, also in the way points are assigned. With regard to paragraphs 11 & 12, the Pelagic AC refers to the comment made previously in light of article 89. The Pelagic AC is of the opinion that there should be a harmonised approach in the assignment of points, without prejudice to national jurisdictions.
- With regard to paragraph 13, the Pelagic AC has noticed that the Commission has prioritized the use of delegated acts over implementing acts.
- Annex I describes possible infringements and the respective number of points to be allocated. The Pelagic AC wishes to comment on point number 3 in the Annex III table: *“Not transmitting a landing declaration or a sales note to the flag Member State when the landing of the catch has taken place in the port of a third country, or a transshipment declaration or a transfer declaration, when the operation has taken place outside Union waters.”*:

For EU vessels operating in third country waters (like Mauritania), making available such reports may take longer than the time limits set in articles 20, 22(1) and 24(1). Not all third countries have the means to process and submit data electronically and as such delays can occur. The Pelagic AC requests flexibility with regard to the enforcement of this point, so that it does not mean points will be assigned if landing report is submitted later than the time limits set in these articles.

Article 92a Liability of legal persons

The Pelagic AC requests clarification on the precise meaning of the word ‘accessory’ in paragraph 3. It’s a wide concept, that may be subject to confusion. If a buyer received fish without being aware a fisherman has committed an offence, is the buyer considered to be an ‘accessory’ to the infringement in those circumstances?

Article 93 National register for infringements

The Pelagic AC supports the introduction of transparency requirements by making information on the implementation of the Control Regulation, such as infringements and sanctions, publicly available. However, the Pelagic AC points out the contradiction in terms between ‘infringement’ and ‘suspected’ in this article. The Pelagic AC believes suspicions of infringements should not be made public, and refers to its previous comment made in this regard under article 91.

In relation with the National register, Member States should publish annually aggregated data on the number and types of inspections, number of infringements detected and reported, and type of follow-up actions (simple warnings, administrative sanctions, criminal sanctions, immediate enforcement measures, number of penalty points administered).

The Pelagic AC appreciates the fact that registering information of individuals that have committed offences is necessary for investigation purposes, but is of the opinion that personal information about the persons who committed the infringements should not be made public.

Article 95 Specific control and inspection programmes

For the purposes of this article and the extra provisions laid down in paragraph 1 with regard to risk based inspection and control programs, the Pelagic AC reiterates its previous comments on CCTV in relation to article 25a.

Article 104 Closure of fisheries for failure to comply with CFP objectives

The Pelagic AC has noticed that the Commission has prioritized the use of delegated acts over implementing acts.

Article 105 Deduction of quotas

- With regard to paragraph 2, the Pelagic AC wishes to point out that the table with multiplying factors from which quota deductions for the following year(s) can be derived in case of quota overfishing in a given year, is ambiguous as it can be interpreted in two different ways. Should the table be read such that the factors must be applied at the higher band value to all bands, or does each percentage apply to each band separately? The Pelagic AC would appreciate clarity from the Commission which of the two interpretations is correct to avoid confusion over the application of such factors.

- With regard to the provision described in paragraph 5, where deductions of stocks (of similar value) can apply in cases where insufficient quota of the same stock is available for deductions in a following year, the Pelagic AC wishes to underline the need for maneuvering space with regard to this provision while at the same time fully supporting the need to sanction those engaged in quota overfishing. For the pelagic industry it can be important to look at alternatives, such as cutting the quotas the following year of a species of similar value, if there isn't enough quota available for the same species. The Pelagic AC therefore calls for a fair basis for quota deductions.

Article 106 Deduction of fishing effort

With regard to paragraph 2, the Pelagic AC reiterates the same question regarding the multiplying factor as stated under article 105(2).

Article 109 General principles for the analysis of data

With regard to paragraph 2(b), the Pelagic AC refers back to its comments made on CCTV (article 25a) and fishing capacity (article 38). Based on these arguments the Pelagic AC asks for an exclusion of pelagic fisheries from points (viii) and (x).

Amendments to Regulation (EC) No 768/2005

The Pelagic AC supports the suggestions brought forward by the Commission and that the role of EFCA should be strengthened.

Amendments to Regulation (EC) No 1005/2008 IUU regulation

The Pelagic AC supports an alignment between the IUU Regulation and the Control Regulation. The Pelagic AC supports digitizing the IUU catch certificate.

Entry into Force

Finally the Pelagic AC notes that adequate time needs to be allowed before any changes enter into force in order to allow operators (and competent authorities) to make any necessary adaptations to their practices and procedures.