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MEMBER OF THE EUROPEAN COMMISSION

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RACMED

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Dear Mr Kahoul,

I would like to thank you for transmitting to us the views of the MED RAC on different issues related to the implementing rules for the new Control Regulation. These new implementing rules have been extensively discussed with Member States over the last couple of months and will be adopted in April. I attach an annex which answers more in detail to your questions.

I hope these explanations are useful in clarifying what the new rules mean, and what has and has not changed. I count on your continued support to make these rules work.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'M. Damadaki', with a long horizontal stroke extending to the right.

Mr Mourad Kahoul
President
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Annex

The implementing rules remain strictly within the framework of Regulation (EC) No 1224/2009. In particular, they cannot deviate from clear legal obligations established in that Regulation. In this regard, the requirement of electronic logbooks is already established in Article 15 of Regulation (EC) No 1224/2009. In fact, Regulation (EC) No 1966/2006 had already set out the introduction of this technology for all fishing vessels above 15m and the schedule that this earlier Regulation established for the introduction of electronic logbooks has been taken over by Regulation (EC) No 1224/2009.

The implementing rules do not deal specifically with the Automated Identification System (AIS). Regulation (EC) No 1224/2009 foresees that all fishing vessels have to be fitted with AIS; this takes up an obligation that had already been introduced by Article 6a of the Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system, as amended by Directive 2009/17/EC. There is no further extension of the use of AIS beyond that already established by that Directive.

Article 8 of Regulation (EC) No 1224/2009 foresees the marking of fishing gear in a general manner. It does not exclude any particular geographical area and in particular not Union waters within the 12 miles zone. The proposed implementing rules will apply to both beam trawls and passive gear both within and outside the 12 miles zone.

As far as the recording and reporting duties of fishing vessels under 12 meters are concerned, the implementing rules do not propose anything that goes beyond current legislation. In particular, the obligation to record daily fisheries related data in the paper logbook has not been changed and has existed since 1983 (s. point 2.1.2 of Annex IV of Regulation (EEC) No 2807/83).

The implementing rules will contain a number of rules on the conduct of inspections. This meets the long standing request of the industry to have a clear set of rules in this area. As to control observers, the new control system only sets down the legal framework. It does not itself introduce such a control observer scheme. Such a scheme can only be set up by a relevant decision of the Council and European Parliament. The implementing rules determine that, when such a control observer scheme applies, the control observers are limited to the verification of relevant documents and the recording of fishing activities. They will not have inspection powers in their own right. Should they observe a serious infringement they can only inform the competent authorities of the flag Member State. Apart from this the relevant rule on the confidentiality of the professional and commercial secrecy (Article 113 of Regulation (EC) No 1224/2009) applies naturally to these observers as well.

The new control system endeavours, in view of the competence of the Member States for the prosecution of infringements, to harmonise the sanction systems of Member States to the extent possible in order to achieve the level playing field so long requested by the industry. Nevertheless the new system is flexible enough to leave Member States discretion to take due account of the concrete circumstances of each individual case. In this regard, it is a fundamental principle that the master of a vessel is responsible for the respect of rules of the Common Fisheries Policy by his crew. As far as the point system for serious infringements is concerned, offenders will lose all points if they do not commit any serious infringements within three years, which I consider to be a good incentive. The point system is based on the assumption that in some cases the decision to opt for illegal behaviour is the result of an economic calculation. The attribution of the points to the licence holder and the master are expected to better incentivise potential offenders against behaviour that will continue serious infringements.

The new control system extends the vessel monitoring system and electronic recording and reporting system to vessels between 12m and 15m and will indeed increase the costs for these vessels. To assist these vessels in the transition, the Commission has provided for the possibility for Member States to grant aid to these vessels for this purpose, with increased EU co-funding rates. In addition, Member States have the possibility to exempt vessels from the obligations, if they are active in daily fisheries or fish only within the 12 miles zone. The extension of these instruments has to be seen against the background that the new control system is based on a comprehensive data validation system for which the availability of electronic data is essential. At the same time, it can be expected that the use of electronic recording and reporting devices will substantially facilitate the fishermen's paper work.

As to possible measures against Member States who do not comply with CFP rules such as the suspension or cancellation of a financial assistance, this responds to long standing requests, including from the industry for efficient measures to ensure a level playing field. These measures do not affect the possibility of operators to use means of legal redress against authorities at national level for any damage they may suffer as a consequence of shortcomings of their flag Member State.

Finally the implementing rules do not contain a rule allowing a Member State to prohibit recreational fisheries as such on stocks that are subject of a recovery plan. They only exempt Member States that have done so to protect a particularly vulnerable stock from the obligation to submit a sampling plan on the impact of recreational catches on such a stock. In this context, the wish of a Member State to avoid a sampling plan for a recreational fishery cannot be in itself a sufficient reason for closing such a fishery.