Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency (codification)

REGULATION (EU) 2019/473 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 March 2019

on the European Fisheries Control Agency

(codification)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Regulation (EC) No 768/2005[(3)] has been substantially amended several times[(4)]. In the interests of clarity and rationality, that Regulation should be codified.

(2) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[(5)] requires Member States to ensure the effective control, inspection and enforcement of the rules of the common fisheries policy and to cooperate with each other and with third countries to that end.

(3) To fulfil those obligations, it is necessary for the Member States to coordinate their control and inspection activities within their land territory and in Union and international waters, in accordance with international law and, in particular, the obligations of the Union in the framework of regional fisheries organisations and under agreements with third countries.

(4) No inspection scheme can be cost effective without providing for inspections on land. It is for that reason that land territory should be covered by joint deployment plans.

(5) Such cooperation, through the operational coordination of control and inspection activities, should contribute to the sustainable exploitation of living aquatic resources as well as ensuring a level playing field for the fishing industry involved in this exploitation, thus reducing distortions in competition.

(6) Effective fisheries control and inspection is considered to be essential for combatting illegal, unreported and unregulated fishing.

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(7) Without prejudice to the responsibilities of Member States under Regulation (EU) No 1380/2013, there is a need for a technical and administrative Union body to organise cooperation and coordination between Member States regarding fisheries control and inspection.

(8) The European Fisheries Control Agency ('the Agency') should be able to support the uniform implementation of the control system of the common fisheries policy, to ensure the organisation of operational cooperation, to provide assistance to Member States and to set up an emergency unit where a serious risk to the common fisheries policy is identified. It should also be able to provide itself with the necessary equipment to carry out joint deployment plans and to cooperate in the implementation of the EU Integrated Maritime Policy.

(9) It is necessary for the Agency, at the Commission's request, to be able to assist the Union and the Member States in their relations with third countries or regional fisheries organisations or both, and to cooperate with their competent authorities within the framework of the international obligations of the Union.

(10) Moreover, there is a need to work towards the effective application of Union inspection procedures. The Agency could over time become a reference source for scientific and technical assistance for fisheries control and inspection.

(11) In order to meet the objectives of the common fisheries policy, which is to provide for a sustainable exploitation of living aquatic resources in the context of sustainable development, the Union adopts measures concerning conservation, management and the exploitation of living aquatic resources.

(12) To ensure the proper enforcement of such measures, adequate control and enforcement means need to be deployed by the Member States. In order to make such control and enforcement more effective and efficient, it is appropriate for the Commission, in accordance with the procedure referred to in Article 47(2) of Regulation (EU) No 1380/2013, and in concert with the Member States concerned, to adopt specific control and inspection programmes.

(13) Coordination by the Agency of operational cooperation between Member States should be undertaken on the basis of joint deployment plans, which organise the use of the available means of control and inspection of the Member States concerned so as to give effect to control and inspection programmes. Fisheries control and inspection activities undertaken by the Member States should be carried out in accordance with common criteria, priorities, benchmarks and procedures regarding control and inspection activities on the basis of such programmes.

(14) The adoption of a control and inspection programme obliges Member States to effectively provide the resources necessary to carry out the programme. It is necessary for the Member States to promptly notify the Agency of the means of control and inspection with which they intend to execute any such programme. No additional obligations in terms of control, inspection and enforcement or in relation to making available the resources necessary in this context should be created by the joint deployment plans.

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(15) A joint deployment plan should only be prepared by the Agency if it is provided for in the work programme.

(16) The work programme should be adopted by the Administrative Board, which ensures that sufficient consensus is reached, including on the matching of tasks intended for the Agency in the work programme and resources available to the Agency, based on the information to be provided by Member States.

(17) The key task of the Executive Director should be to ensure in his or her consultations with Members of the Board and Member States that the ambitions set out in the work programme for each year are matched by sufficient resources made available to the Agency by Member States to fulfil the work programme.

(18) The Executive Director should, in particular, draft precise deployment plans, using the resources notified by Member States, for the fulfilment of each control and inspection programme and respecting the rules and aims set out in the specific control and inspection programme on which the joint deployment plan is based, as well as other relevant rules, such as those relating to Union Inspectors.

(19) In this context, it is necessary that the Executive Director manages the timing in such a manner as to give Member States sufficient time to provide their comments, building on their operational expertise, while staying within the work plan of the Agency and the time limits provided for in this Regulation. It is necessary for the Executive Director to take account of the interest of the Member States concerned in the fisheries covered by each plan. In order to ensure the efficient and timely coordination of the joint control and inspection activities, it is necessary to provide for a procedure to allow for decisions on the adoption of the plans when an agreement cannot be reached between the Member States concerned.

(20) The procedure for the drafting and the adoption of joint deployment plans outside Union waters should be similar to that concerning Union waters. The basis for such joint deployment plans should be an international control and inspection programme that gives effect to international obligations relating to control and inspection which are binding upon the Union.

(21) For the implementation of joint deployment plans, the Member States concerned should pool and deploy the means of control and inspection that they have committed to such plans. The Agency should assess whether the available means of control and inspection suffice and, where appropriate, inform the Member States concerned and the Commission that the means are not sufficient to perform the tasks required under the control and inspection programme.

(22) While Member States should respect their obligations relating to inspection and control, in particular under the specific control and inspection programme adopted pursuant to Regulation (EU) No 1380/2013, the Agency should not have the power to impose additional obligations through joint deployment plans or to sanction Member States.

(23) The Agency should review periodically the effectiveness of joint deployment plans.

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(24) It is appropriate to provide for the possibility to adopt specific implementing rules for the adoption and approval of joint deployment plans. It may be useful to use this possibility once the Agency has started operating and if the Executive Director considers that such rules should be laid down in Union law.

(25) The Agency should be entitled, where so requested, to provide contractual services relating to the means of control and inspection to be used for joint deployment by the Member States concerned.

(26) For the purpose of fulfilling the Agency's tasks, the Commission, the Member States and the Agency should exchange relevant information on control and inspection through an information network.

(27) The status and structure of the Agency should correspond to the objective character of the results it is intended to produce and allow it to carry out its functions in close cooperation with the Member States and with the Commission. Consequently, the Agency should be granted legal, financial and administrative autonomy while at the same time maintaining close links with the Union institutions and the Member States. To that end, it is necessary and appropriate that the Agency should be a Union body having legal personality and exercising the powers which are conferred on it by this Regulation.

(28) For the contractual liability of the Agency, which is governed by the law applicable to the contracts concluded by the Agency, the Court of Justice of the European Union should have jurisdiction pursuant to any arbitration clause contained in the contract. The Court of Justice should also have jurisdiction in disputes relating to compensation for any damage arising from the non-contractual liability of the Agency in accordance with the general principles common to the laws of the Member States.

(29) The Commission and the Member States should be represented within an administrative board that would be entrusted with ensuring the correct and effective functioning of the Agency.

(30) Given that the Agency has to fulfil Union obligations and, at the Commission's request, to cooperate with third countries and regional fisheries organisations within the framework of the international obligations of the Union, it is appropriate that the Chair of the Administrative Board should be elected from among the Commission representatives.

(31) Voting arrangements in the Administrative Board should take into account the interests of the Member States and the Commission in the effective operation of the Agency.

(32) An Advisory Board should be created in order to advise the Executive Director and to ensure close cooperation with stakeholders.

(33) It is appropriate to provide for the participation in the deliberations of the Administrative Board of a representative of the Advisory Board with no voting rights.

(34) It is necessary to provide for the appointment and dismissal of the Executive Director of the Agency, as well as for the rules governing the exercise of his or her functions.

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(35) In order to promote the transparent functioning of the Agency, Regulation (EC) No 1049/2001 of the European Parliament and of the Council[(6)] should apply without restriction to the Agency.

(36) In the interest of the protection of the privacy of individuals, Regulation (EU) 2018/1725 of the European Parliament and of the Council[(7)] should apply to this Regulation.

(37) In order to guarantee the functional autonomy and independence of the Agency, it should be granted an autonomous budget the revenue of which comes from a contribution from the Union as well as from payments for contractual services rendered by the Agency. The Union budgetary procedure should apply as far as the Union contribution and any other subsidies chargeable to the general budget of the European Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.

(38) In order to combat fraud, corruption, and other unlawful activities, the provisions of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[(8)] should apply without restriction to the Agency, which should accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)[(9)].

(39) The measures necessary for the implementation of this Regulation should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(10)],

HAVE ADOPTED THIS REGULATION:

CHAPTER I

OBJECTIVE AND DEFINITIONS

Article 1

Objective

This Regulation makes provision for a European Fisheries Control Agency (‘the Agency’), the objective of which is to organise the operational coordination of fisheries control and inspection activities by the Member States and to assist them to cooperate so as to comply with the rules of the common fisheries policy in order to ensure its effective and uniform application.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply: