Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006

COUNCIL REGULATION (EC) No 1224/2009

of 20 November 2009

establishing a **[**F1**[**X1Union**]]** control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament(1),

Having regard to the opinion of the European Economic and Social Committee(2),

Having regard to the opinion of the Committee of the Regions(3),

Having regard to the opinion of the European Data Protection Supervisor(4),

Whereas:

(1) The objective of the common fisheries policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy(5), is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

(2) Given that the success of the common fisheries policy involves implementing an effective system of control, the measures provided for in this Regulation seek to establish a Community system for control, inspection, and enforcement with a global and integrated approach in accordance with the principle of proportionality, so as to ensure compliance with all the rules of the common fisheries policy in order to provide for the sustainable exploitation of living aquatic resources by covering all aspects of this policy.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 1224/2009. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(3) The experience gained in the application of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy[(6)] has shown that the current control system no longer suffices to ensure compliance with the rules of the common fisheries policy.

(4) Currently control provisions are contained in a wide number of overlapping and complex legal texts. Some parts of the control system are poorly implemented by Member States which results in insufficient and divergent measures in response to infringements of the rules of the common fisheries policy thereby undermining the creation of a level playing field for fishermen across the Community. Accordingly the existing regime and all the obligations therein should be consolidated, rationalised and simplified, in particular through reduction of double regulation and administrative burdens.

(5) In view of the scale of the depletion of marine aquatic resources, it is vital for the Community to adopt the necessary measures to develop a culture of compliance among all operators with the rules of the common fisheries policy, and with the objectives set out by the World Summit on Sustainable Development in 2002 as well as the European Council's Sustainable Development Strategy. To achieve this aim, the rules for control, inspection, and enforcement of conservation as well as resource management measures, structural measures and measures on the common organisation of the market should be reinforced, harmonised and strengthened.

(6) Given that Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing[(7)], obliges the Member States to take appropriate measures to ensure the effectiveness of the fight against all illegal, unreported and unregulated (IUU) fishing and associated activities and given that Council Regulation (EC) No 1006/2008 of 29 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters[(8)] establishes provisions on authorisations for Community fishing vessels to engage in fishing activities outside Community waters and on authorisations for third country fishing vessels to engage in fishing activities in Community waters, this Regulation should be complementary to these Regulations and ensure that there is no discrimination between Member States' and third country nationals.

(7) This Regulation should affect neither special provisions contained in international agreements or applicable in the framework of regional fisheries management organisations nor any national control provisions which fall within the scope of this Regulation but go beyond its minimum provisions, provided that such national provisions are in conformity with Community law.

(8) Modern technologies, such as the vessel monitoring system, the vessel detection system and the automatic identification system, should be exploited since they allow effective monitoring, systematic and automated cross-checks in a rapid manner, and facilitate the administrative procedures for both the national authorities and the operators and thus allow timely risk analyses and global assessments of all relevant control information.

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The control system should therefore allow Member States to combine the use of the various control instruments to ensure the most efficient method of control.

(9) A new, common approach to fisheries control should be introduced that includes comprehensive monitoring of catches, with a view to ensuring a level playing field for the fishing sector that takes into account the differences across the segments of the fleet. To this end common criteria for the implementation of fisheries control and in particular standardised and coordinated inspection procedures at sea, on land and throughout the market chain should be established. As part of the new approach the respective responsibilities of the Member States, the Commission and the Community Fisheries Control Agency should be clarified.

(10) Management of fishery resources at Community level is based in particular on total allowable catches (TACs), quotas, effort regimes and technical measures. Appropriate steps should be taken to ensure that Member States adopt the necessary measures to implement these management measures in an effective manner.

(11) Control activities and methods should be based on risk management using cross-checking procedures in a systematic and comprehensive way by Member States. It is also necessary for Member States to exchange relevant information.

(12) Cooperation and coordination between Member States, the Commission and the Community Fisheries Control Agency should be intensified in order to promote compliance with the rules of the common fisheries policy.

(13) To ensure that fishing activities are only undertaken in line with the rules of the common fisheries policy such activities should be subject to a fishing licence and, when specific conditions apply, to a fishing authorisation. Also rules on the marking and identification of fishing vessels and their gear should apply.

(14) To ensure an effective control, Member States should operate a vessel monitoring system and fishing vessels of 12 metres' length overall or more should be equipped with a device allowing Member States to automatically locate and identify those vessels. Furthermore fishing vessels should be equipped with an automatic identification system in accordance with Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system[(9)], and Member States should use the data of such a system for cross-checking purposes.

(15) Cooperation among Community agencies and among authorities of Member States should be strengthened. For this purpose, it should be possible to transmit data from the vessel monitoring system, automatic identification system and the vessel detection system to Community agencies and competent authorities of Member States engaged in surveillance operations for the purpose of maritime safety and security, border control, protection of the marine environment and general law enforcement.

(16) It should be for the Council to decide on the future use of electronic monitoring devices and traceability tools such as genetic analysis and other fisheries control technologies if these technologies lead to an improved compliance with rules of the common fisheries policy in a cost effective way.

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(17) Member States should monitor the activities of their fishing vessels in and outside Community waters. To facilitate effective monitoring masters of Community fishing vessels of 10 metres' length overall or more should be obliged to keep a fishing logbook and submit landing and transhipment declarations. In order to make use of modern technologies, for fishing vessels of 12 metres' length overall or more, the fishing logbook should be in electronic form and the landing and transhipment declarations should be submitted electronically.

(18) The information contained in the fishing logbooks of fishing vessels should be verified at the time of landing. Accordingly, those involved in the landing and marketing of fish and fishery products should be required to declare the quantities landed, transhipped, offered for sale or purchased.

(19) For small fishing vessels of less than 10 metres' length overall an obligation to keep a fishing logbook or to complete a landing declaration would constitute a disproportionate burden in relation to their fishing capacity. In order to ensure an adequate level of control over such vessels, Member States should monitor their activities by the implementation of a sampling plan.

(20) Transhipments at sea escape any proper control by flag or coastal states and therefore constitute a possible way for operators to carry illegal catch. To improve controls, transhipment operations in the Community should be authorised only in designated ports.

(21) The Member States' authorities should be able to monitor landings in their ports. To that end fishing vessels engaged in fisheries on stocks subject to a multiannual plan that are under the obligation to record fishing logbook data electronically should be required to pre-notify those authorities of their intention to land in their ports. Member States should be allowed to deny access if the required information is not complete.

(22) Since the management of fishing resources is based on fishing opportunities it should be ensured that catches and deployed effort are correctly recorded and that the catches and deployed effort are charged against the quotas and effort allocations of the flag Member State. Fisheries should be closed if the available quota or effort allocation have been exhausted.

(23) In view of the capacity requirements in the Community fishing fleet as contained in Article 13 of Regulation (EC) No 2371/2002, Council Regulation (EC) No 639/2004 of 30 March 2004 on the management of fishing fleets registered in the Community outermost regions[10], Commission Regulation (EC) No 1438/2003 of 12 August 2003 laying down implementing rules on the Community Fleet Policy as defined in Chapter III of Council Regulation (EC) No 2371/2002[11] and Commission Regulation (EC) No 2104/2004 of 9 December 2004 laying down detailed implementation rules for Council Regulation (EC) No 639/2004[12], instruments should be introduced for the control of the fleet capacity which should include the monitoring of the engine power and of the use of fishing gear. For that reason Member States should take measures to ensure that the total capacity of the fishing licences does not exceed the maximum capacity levels and ensure that the propulsion engine power of fishing vessels does

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not exceed the certified engine power of those vessels. Member States should for this purpose certify the propulsion engine power of fishing vessels whose propulsion engine power exceeds 120 kW and also verify on the basis of a sampling plan the consistency of engine power with other available information.

(24) Particular measures should apply in case of multiannual plans as a particular form to protect the concerned stocks. Transhipments of catches of stocks subject to a multiannual plan should be allowed only in designated ports and only if these catches have been weighed.

(25) Special provisions should be foreseen that only allowed gears are used and that lost gear is retrieved.

(26) Special rules should apply to fishing restricted areas. The procedure for the establishment and lifting of real time closures for fishing grounds should be clearly established.

(27) As recreational fisheries can have a significant impact on fish resources, Member States should ensure that they are conducted in a manner compatible with the objectives of the common fisheries policy. For stocks under a recovery plan Member States should collect catch data of recreational fisheries. Where such fisheries have a significant impact on the resources, the Council should have the possibility to decide on specific management measures.

(28) In order to establish a comprehensive control regime, the whole chain of production and marketing should be covered by such a regime. It should include a coherent traceability system complementing the provisions contained in Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety[(13)], and an enhanced control of producer organisations. It should also protect the interests of consumers by providing the information concerning the commercial designation, the production method and the catch area at each stage of the marketing as contained in Commission Regulation (EC) No 2065/2001 of 22 October 2001 laying down detailed rules for the application of Council Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products[(14)]. It should ensure the monitoring of producer organisations in accordance with Commission Regulation (EC) No 2508/2000 of 15 November 2000 laying down the detailed rules for the application of Council Regulation (EC) No 104/2000 as regards operational programmes in the fisheries sector[(15)].

(29) To ensure that all catches are properly controlled Member States should ensure that all fisheries products are first marketed or registered at an auction centre or to registered buyers or to producer organisations. As the exact weight of catches needs to be known to follow the utilisation of quotas, Member States should ensure that all fisheries products are weighed unless sampling plans based on a common methodology are in place.

(30) In order to follow the way of the catch and to be able to verify their coherence with catch data, registered buyers, registered auctions or other bodies or persons authorised by