

December 2015

### Council Regulation 1006/2008 on fishing authorisations

*This briefing is one of a series of 'Implementation Appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is, or will shortly be, subject to an amending proposal from the European Commission, intended to update the current text. 'Implementation Appraisals' aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date - drawing on available inputs from, inter alia, the EU institutions and advisory committees, national parliaments, and relevant external consultation and outreach exercises. They are provided to assist parliamentary committees in their consideration of the new Commission proposal, once tabled.*

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| <b>EP committee responsible</b> at time of adoption of the EU legislation: Committee on Fisheries (PECH).  |
| <b>Date of adoption</b> of original legislation in plenary: 10 April 2008. <sup>1</sup>  |
| <b>Entry into force:</b> 18 November 2008.   |
| <b>Date planned for review</b> of legislation in question: not provided for in the Regulation.   |
| <b>Timeline for new amending legislation:</b> Impact assessment work started in 2013 and the initial proposal was foreseen by the end of 2014. It was part of the Commission Work Programme for 2015 ( <a href="#">Annex III - REFIT</a> ), with a proposal expected in the third quarter of the year. |

## 1. Background

This Implementation Appraisal focuses on [Regulation 1006/2008 on fishing authorisations](#)<sup>2</sup> (also known as the Fishing Authorisation Regulation - FAR) and disciplining the access of third-country vessels to EU waters<sup>3</sup> and the access of EU vessels to non-EU waters. Where relevant, this implementation appraisal will also cover [implementing Regulation 201/2010](#) laying down the detailed rules for fishing authorisations and [Regulation 1005/2008](#) to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU).<sup>4</sup> The forthcoming review of the FAR is part of a wider effort to improve the effectiveness and coherence of the regulatory framework in this field after the [latest reform of the Common Fisheries Policy](#) (CFP), in effect since 1 January 2014. The European Union is home to 85,692 active vessels (data from March 2015)<sup>5</sup>, contributing to about 5% of total global catches.<sup>6</sup> A vast majority of EU catches come from the North East Atlantic and Eastern Central Atlantic areas and, to a lower degree, from the Mediterranean.

<sup>1</sup> Consultation procedure requiring a single reading.

<sup>2</sup> An authorisation is defined as "the entitlement to engage in fishing activities during a specified period, in a given area or for a given fishery" in Article 2 of Regulation 1006/2008.

<sup>3</sup> Authorisations are needed both for fishing activities and to transit through EU waters.

<sup>4</sup> More details on IUU fishing are available [here](#). See also [FAO's International Plan of Action to prevent, deter and eliminate IUU fishing](#).

<sup>5</sup> For the latest figures, see the [Community Fishing Fleet Register](#) (last accessed 16 June 2015).

<sup>6</sup> With its 5.18% share, the EU28 held the fifth place in the global ranking for catches in 2011, with China in the lead (global share of 17%), followed by Peru (9%), Indonesia (6%), and the United States (5.47%). Further details are available in the 2014 edition of [Facts and Figures on the CFP](#), p. 21.

However, more than a quarter of catches by EU vessels is actually taking place in third country and international waters (reaching 90% for tuna and related species), thus requiring a specific set of rules in the framework of the so-called external dimension of the Common Fisheries Policy. It is estimated that the EU external fleet comprises about 700 vessels, representing 24% of the EU's fishing capacity in terms of tonnage.<sup>7</sup> Fishing possibilities in non-EU waters can be obtained either through bilateral agreements with third countries, or by gaining access rights from a relevant Regional Fishing Management Organisation (see the box below) when the high seas are concerned. To access these fishing possibilities, EU vessels (and reciprocally, third-country vessels wishing to fish in EU waters) must meet the authorisation requirements set out in Regulation 1006/2008 and implementing Regulation 1005/2008. The purpose of these rules is to provide a dedicated legal framework for external fishing activities, ensure a level playing field between the vessels concerned, and facilitate the attainment of specific EU policy goals and standards. In this respect it is worth recalling that the EU is a major importer of fisheries (11% of global resources in terms of volume and 24% of fisheries products in terms of value).<sup>8</sup> This gives the EU both the possibility and the responsibility to concretely impact on the long-term sustainability of fisheries worldwide.<sup>9</sup> It is also reflected in the increased emphasis on resource conservation, environmental sustainability and the respect for human rights foreseen in the bilateral agreements allowing EU vessels to fish for the surplus stock in developing countries' exclusive economic zone.<sup>10</sup> The EU is part of two types of agreements: fisheries partnerships agreements - FPAs (13 active ones at the time of writing)<sup>11</sup> whereby the EU provides technical and financial support to its counterpart and obtains fishing rights under certain conditions; and Northern Agreements (3 in total), that entail the joint management and exploitation of shared fish stocks with Norway, Iceland and the Faroe Islands.

#### **Regional Fisheries Management Organisations (RFMOs)**

As a high mobile resource, fish requires forms of international cooperation to guarantee that essential tasks for the adequate management, conservation and sustainable exploitation of marine resources are undertaken, also in the high seas. These tasks include scientific research and data collection to establish the size and evolution of fish stocks, control of catches, enforcement activities, and so on. In this context RFMOs, i.e. organisation formed by various countries sharing a fishing interest in a specific area (e.g. local countries/coastal states and countries interested in fishing in the region), play a crucial role. There are currently 20 RFMOs divided in two groups: a) those managing highly migratory fish stocks like tuna and b) those managing non-tuna stocks. Some RFMOs have a purely advisory role, but the majority has management powers, for instance as regards setting catch and effort limits, as well as control obligations. The EU is part of 6 tuna RFMOs and of 11 non-tuna organisations. In

## **2. EU-level reports, evaluations and studies**

The recent overhaul of the CFP and the prospected FAR revision both stem from the need to address the shortcomings and under-performance of previous approaches. Suffices to say that, despite past policy efforts to promote the sustainability of fishing activities, problems of overcapacity and resource depletion featured prominently in the European Commission's [impact assessment accompanying the proposed revision of the CFP](#).<sup>12</sup> As regards the external dimension of the CFP, the impact assessment concluded that the existing set of rules underperformed in terms of

<sup>7</sup> See the European Commission's [Roadmap on the Proposal for a Regulation of the European Parliament and of the Council replacing Council Regulation 1006/2008 on fishing authorisations](#), p. 2.

<sup>8</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on external dimension of the common fisheries policy, [COM\(2011\) 424](#), p. 3.

<sup>9</sup> On this see also the European Parliament's Resolution 2011/2318(INI), point. 4.

<sup>10</sup> As established in the [United Nations Convention of the Law of the Sea \(UNCLOS\)](#), Articles 55 and 57, a coastal state has special rights (i.e. an exclusive economic zone) on the exploration and use of marine resources located within 200 nautical miles from its coastal baseline. See also the [FAO Code of Conduct for Responsible Fisheries](#).

<sup>11</sup> Note that these agreements are again divided in two types: tuna agreements allowing EU vessels to follow tuna stocks as they migrate (10 agreements currently active with Cape Verde, Ivory Coast, Sao Tomé and Príncipe, Gabon, Madagascar, Senegal, Comoros, Seychelles, Mauritius and Kiribati) and mixed agreements granting access to a variety of fish stocks with Morocco, Greenland and Guinea-Bissau. There are also 6 dormant agreement (i.e. EU vessels are not allowed to fish in those waters until a protocol complementing the original FPA is adopted by the country concerned), with Mozambique, Micronesia, Solomon Island, Mauritania, Gambia and Equatorial Guinea. The legal text of each agreement can be accessed [here](#), while evaluations of the implementation of several bilateral agreements are available [here](#). The importance of publishing these evaluations to foster transparency around access agreements has been stressed by several stakeholders, including the [Coalition for Fair Fisheries Arrangements](#) (see also the [Tuna Transparency Initiative](#)). Lack of transparency severely hampers the implementation of the regulatory framework e.g. no data are provided on licences, secret licences are issued, no clarity on how funding is actually spent, illegal and unreported fishing activities may occur, etc. When compared to other countries, the EU is at the forefront in terms of transparency of its access agreements, although [criticism](#) remains in some instances. For a specific example of agreement, see e.g. [EPRS on the EU-Morocco FPA](#) and on the [EU-Mauritania FPA](#).

<sup>12</sup> On overfishing and its impact on employment in Europe and abroad, see the dedicated [EPRS blog post](#).

sustainability for a series of reasons. These include a complex and sometimes contradictory regulatory framework that makes compliance difficult and industry responsibilities unclear, weak links between FPAs and sustainability goals in third countries and a lack of governance in the RFMOs. Problems related to regulatory complexity, with their negative impact on the implementation and enforcement of existing rules<sup>13</sup> are also highlighted in the European Commission roadmap outlining the key elements of the proposed revision of Regulation 1006/2008. The roadmap also points to the uneven quantity and quality of the data currently required from Member States and notes that information is not always reliable. In addition sanctions for breaching the FAR do not appear deterrent enough. Finally two new problems have developed: abusive/repetitive reflagging, whereby EU vessels that have exited the EU fishing fleet<sup>14</sup> reflag first to a third country to continue operating and later access once again the Community fleet and its benefits by reflagging to the original or another Member State. While reflagging is legitimate in some instances;<sup>15</sup> when it is done to circumvent existing rules on e.g. total catches limits and social protection of the crew, the problem needs addressing. A second issue concerns the so-called private authorisations whereby fishing activities by EU vessels in third waters are carried out outside existing bilateral agreements, often to bypass existing rules. This undermines the level playing field that the FAR seeks to create.

In a 2011 Communication on the external dimension of the CFP, the Commission set out its new policy orientation and indicated that it would propose a revision of the FAR by 2012.<sup>16</sup> This decision was also supported by the Council Conclusions of 19 March 2012. The European Parliament itself adopted a resolution in 2012<sup>17</sup> calling for a thorough reform of the fishing authorisation regulation and putting forward some concrete proposals to foster the environmental and social sustainability objectives foreseen by a revamped Common Fisheries Policy. These are presented in greater detail in the coming sections.

It is worth adding that there are no dedicated reports evaluating the implementation of Regulation 1006/2008; however the findings of the studies included in this section provide some pertinent and valuable information related to fishing authorisations.

### **The 2014 Annual Economic Report on the European Fishing Fleet<sup>18</sup>**

The Scientific, Technical and Economic Committee for Fisheries (STECF) and the Joint Research Centre of the European Commission (JRC) take stock on a yearly basis of the structure and economic performance of the European Fishing Fleet and measures the attainment on some specific CFP goals, such as the reduction of overcapacity. The data provided in the report are from 2012 and show that the EU fleet displayed an improved economic performance, essentially driven by lower labour and capital costs in comparison to previous years. This general performance hides national differences, as five Member States registered overall losses and small-scale coastal vessels (defined in the Report as vessels below 12 meters and using static gear) fared worse than their larger counterparts. More relevant in the context of this implementation appraisal is the so-called "distant-water fleet"<sup>19</sup> which includes vessels subjected to the FAR. The STECF report confirms the profitability of this segment in 2012, which generated the highest profit margins (8.9%) in comparative terms. Despite its relatively small share (1% of the EU fleet in terms of numbers)<sup>20</sup> the distant-water fleet accounted for 4% of employment (with "surprisingly" low wages when compared to the rest of the fleet)<sup>21</sup> and 16% of overall energy consumption. Data on distant-water fleets were available for 7 Member States and

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<sup>13</sup> A detailed analysis of these problems can be found at pages 22-24 of the impact assessment supporting the revision of the CFP.

<sup>14</sup> Some vessels even received subsidies to exit the Community fleet, in the context of a scheme to address overcapacity. See the example provided in one of the stakeholder responses to the public consultation held by the European Commission in 2013.

<sup>15</sup> Reflagging is even required by some countries, e.g. Chili and Namibia. Further details are available here.

<sup>16</sup> See p. 11 of the Communication. As mentioned impact assessment work started in 2013 and a proposal was initially expected at the end of 2014.

<sup>17</sup> European Parliament Resolution of 22 November 2012 on the external dimension of the Common Fisheries Policy. 2011/2318 - 19/03/2012.

<sup>18</sup> Scientific, Technical and Economic Committee for Fisheries (STECF), 2014 Annual Economic Report on the EU Fishing Fleet (STECF 14-16). The STECF was established following Regulation 2371/2002, Art. 33.1 stating that "A Scientific, Technical and Economic Committee for Fisheries (STECF) shall be established. The STECF shall be consulted at regular intervals on matters pertaining to the conservation and management of living aquatic resources, including biological, economic, environmental, social and technical considerations".

<sup>19</sup> Defined in the report (p. 16) as "all EU-registered vessels over 24 metres operating in Other Fishing Regions (OFR) including some EU outermost regions".

<sup>20</sup> Note that the report cautions on the accuracy of numbers, which are probably an underestimation as some vessels are not reported or aggregated for confidentiality reasons (e.g. several ship have the same owners).

<sup>21</sup> *Ibid.*, p. 20. The report attributes this difference to the employment of third country nationals on this type of vessels; although there are differences in salary levels across the EU as well (e.g. France pays staff on distant-water vessels by far the highest average salary of all types of vessels).

briefly summarised here.<sup>22</sup> In Denmark most of the net profit was generated by the distant-water fleet targeting mackerel, herring and sandeel; Estonia also displayed a positive performance. France saw an increase of revenues of 21.6% between 2011 and 2012;<sup>23</sup> however the trend might deteriorate due to the non-renewal of bilateral fishing agreements with some African third countries where the fleet is active. The German distant-water fleet exhibited a more mitigated performance in 2013, i.a. because of diminished fishing opportunities in Greenland waters and disputes on quota allocation for Atlantic mackerel. The Dutch fleet faced issues in African and Pacific waters and a stop of activities in Mauritania, which negatively affected results for 2013, but improvements are expected for the following years. The Portuguese distant-water fleet remained profitable despite some deterioration in comparison to the past and constraints in deep-sea and shark catches. Spain has the largest distant-water fleet (264 vessels in 2012) and was the most profitable nationally, with a 12% increase in landing income.

### **EC Study on the supply and marketing of fishery and aquaculture products in the European Union (May 2009)**

While this study concerns questions falling outside the scope of the FAR revision, its chapter on the prospected trends in future consumption and their impact on EU demand for EU fisheries products is worthy of attention. A prospected growth in consumption (the period covered is 2005-2030) in several Member States that accessed the EU from 2004 onwards is likely to further increase Europe's dependence on imports. This is the combined result of a decrease in EU fisheries production particularly for species subject to quotas and the forecasted stabilization of catches by EU vessels in the future. Note that an increase in EU aquaculture production is not expected to compensate the reduction in fishing fleet catches. In terms of risks to activities in third-country waters, the report highlights potential sustainability problems for e.g. tropical prawns.

### **Study on illegal, unreported and unregulated fishing by the European Parliament (July 2014)**

A study on illegal, unreported and unregulated fishing (IUU) was published by the Parliament in 2014.<sup>24</sup> As mentioned above, fishing authorizations as disciplined by the FAR and the implementation of IUUs rules<sup>25</sup> are two piece of the same puzzle, particularly when fishing in third country waters is concerned. One of the identified weaknesses of the present system is the limited deterring effect of current sanctions. The European Parliament's report reaches similar conclusions on IUU fishing rules. Specifically, the study investigates the problem of IUU fishing, its origins and consequences in order to establish which sanctioning measures would be more appropriate to deter the phenomenon. It then examines policy measures against IUU fishing to highlight challenges at the implementation stage. It concludes with a comparative overview of national practices to sanction IUU infringements in the Member States.

According to the study, the three main economic drivers of IUU fishing are overcapacity, ineffective management and subsidies e.g. to construct new vessels and repair old ones. The authors also explain that weak governance arrangements are one of the main obstacles to the deterrence of IUU rules. Tracking ownership of fishing vessels is identified as being particularly problematic, and attempts to establish an international register of fishing vessels have failed. The problem also concerns the activities of fishing vessels in the exclusive economic zones (EEZs) of third countries, i.e. those normally falling within the FAR remit. The authors also note that distant-water fishing requires planning: hence, if IUUs fishing takes place, this is likely to be the result of coordinated action rather than opportunistic behaviour.<sup>26</sup> For instance, distant-water fishing may be used for IUU activities when legal catches are mixed with illegal ones to "launder" them, or because economies of scale from using a large fleet allow spreading the costs of sanctions over several vessels, thus maintaining the economic advantage of illegal fishing. However careful monitoring by competent authorities in advance makes long distance IUU fishing potentially easier to prevent. While the EU is transparent on the activities of its vessels in EEZs, this is not necessarily the case for other major fishing producers. There are also discrepancies in the enforcement of IUU rules across the EU; this might lead offenders to redirect their activities to less strictly controlled areas. The implementation of monitoring, control and surveillance (MCS) activities seems to be a weak point in several third countries. Therefore, the study encourages the EU to provide adequate support for MCS through regional cooperation frameworks. Naturally, IUU fishing may also affect third country vessels operating in EU waters (and thus covered by the FAR). The study recommends that every

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<sup>22</sup> Other countries with a more limited distant-water fleet include Italy, Poland and Lithuania.

<sup>23</sup> Ibid., p. 31.

<sup>24</sup> Blomeyer & Sanz (2014), "Illegal, Unreported and Unregulated Fishing: Sanctions in the EU, Study for the European Parliament", DG IPOL, Policy Department B, Fisheries, July, PE 529.069.

<sup>25</sup> Council Regulation 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (known as the IUU Regulation) entered into force in January 2010.

<sup>26</sup> See pp. 21-22 of the study.

infringement should be dealt with and repeat offenders should not be allowed to benefit from out-of-court settlements. In other words, this and other suggestions put forward in the report are aimed at making IUU fishing less advantageous economically.<sup>27</sup> Indeed in a context of raising demand for fish, as long as the benefits of engaging in IUU fishing outweigh the costs of doing so, eradicating the problem will remain rather difficult.

### 3. European Parliament position

#### [Resolution of 22 November 2012 on the external dimension of the Common Fisheries Policy](#)<sup>28</sup>

With this resolution, the European Parliament responded to the Commission's 2011 Communication on the external dimension of the CFP. While the Parliament welcomes the Commission's text, it also stresses that the scope of the Communication is not broad enough and should aim for a comprehensive approach to all products seeking to enter the EU market, rather than focusing most of its attention on bilateral agreements and RFMOs.<sup>29</sup>

Maintaining present fishing agreements and searching for new fishing opportunities in third countries is listed as a priority objective of the external dimension of the CFP. Indeed, the Resolution notes, whenever the EU fleets stop operating in a certain area, fishing rights are normally redistributed to other fleets, which may not always apply the high sustainability and conservation standards advocated by the EU. In addition to a set of comprehensive recommendations on various aspects of the external CFP, ranging from the need to drive forward a global and multilateral agenda on sustainable fisheries with other key partners such as the USA, Japan, Russia and China, to launching an initiative at United Nations level to set up a global catch and traceability documentation scheme covering all major fish species entering international trade,<sup>30</sup> the resolution also touches on fishing authorizations and issues closely linked to the implementation of Regulation 1006/2008. On bilateral agreements, while noting that past implementation has not always been optimal, the resolution stresses the importance of linking access to third countries' resources to the respect of specific principles, including human rights. It also calls for limiting access to resources where scientific evidence demonstrates that they are in surplus for the coastal State. These requirements should be included in dedicated provisions of future bilateral agreements.<sup>31</sup> A strong accent on full transparency on catches, payments and implementation<sup>32</sup> is needed to prevent corruption and the improper use of EU support. In this respect, the Parliament should be involved in the long-term monitoring assessment of those bilateral agreements. The resolution also urges the Commission to actively contribute to improving the governance and functioning of RFMOs. This effort should also include compliance and enforcement so that non-complying states are adequately sanctioned. In this respect, additional funding should be allocated to RFMOs to support them in their fight against IUU fishing.<sup>33</sup> The Resolution also calls for a revision of the FAR to ensure that EU flagged vessels that have temporarily left the Community Register to access fishing opportunities elsewhere should not be allowed for 24 months to benefit from the opportunities offered by EU bilateral agreements in force when they left the Register if they chose to re-enter the Register.<sup>34</sup> This proposal should help address the issue of abusive reflagging discussed above. The resolution also calls upon the Commission and the Member States to consider which strong incentives could be put in place to make EU-flagged vessels remain on the EU Register or to reflag to states that are in good standing in all relevant RFMOs, and indicates that the best option to achieve this objective is to ensure that the same social and environmental standards are applied from third countries and via market-related measures.<sup>35</sup> On private agreements, which constitute one of the critical issues identified by the roadmap on the proposed revision of Regulation 1006/2008, the Parliament believes that private agreements between EU ship-owners and third countries should be legitimately respected and protected if they comply with international law. Information on these agreements (e.g. number and type of vessels concerned, catches) as well as on joint ventures in third countries should be made publicly available by Member States, subject to data protection rules as established by the FAR.<sup>36</sup>

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<sup>27</sup> The study stresses that action should be taken globally: if IUU fishing only becomes economically disadvantageous in EU waters, the problem will simply move to other regions.

<sup>28</sup> Text adopted with 450 votes to 11 and 19 abstentions.

<sup>29</sup> *Ibid.*, point 1.

<sup>30</sup> *Ibid.*, point 14.

<sup>31</sup> *Ibid.*, points 25 and 26.

<sup>32</sup> *Ibid.*, point 50.

<sup>33</sup> *Ibid.*, point 59.

<sup>34</sup> *Ibid.* point 31. The same prohibition should apply to vessels doing temporary reflagging when fishing under RFMOs.

<sup>35</sup> *Ibid.*, point 74.

<sup>36</sup> *Ibid.*, points 69 and 72.

A [motion for a EP Resolution](#) on "Common rules with a view to the application of the external dimension of the CFP, including fisheries agreements" was referred to the PECH Committee in April 2015. The [Own Initiative Report](#) is awaiting committee decision at the time of drafting this briefing (November 2015).

## Reactions to the Parliament's Resolution of 22 November 2012

A [commentary by Agritrade on the EP Resolution](#) notes that the Parliament goes further than the Commission as regards activities taking place outside the traditional frameworks of bilateral agreements and RFMOs. Indeed, it calls for European sustainable fisheries investments to be included as a third pillar of the external dimension of the CFP. In addition, the commentary notes that the Parliament raises the bar in terms of transparency by calling for the publication of information on private agreements between EU companies and third countries as well as joint ventures.

In a [recent interview](#) Alain Cadec, MEP and Chair of the European Parliament's Committee on Fisheries confirmed that "transparency, control of fishing activities and the fight against IUU fishing are priority objectives for the European Parliament Fisheries Committee". He also stressed that appropriate legal instrument such as the IUU Regulation and the revised CFP are now in place to reach these objectives. In this context, the proposed revision of the FAR could help maximising the impact of the existing legal framework by ensuring coherence between the rules applying to vessels fishing in European waters and those fishing outside.<sup>37</sup>

## 4. Members' questions

MEP Nuno Melo put forward a series of questions<sup>38</sup> on the implementation of bilateral fishing agreements asking whether the desired objectives in terms of sustainable fishing and the development of partner countries have been attained. These questions elicited a [joint response from the European Commission](#) explaining that the protocols of each Fishing Partnership Agreement allocate some funding to promote sustainable fishing in the third countries. Overall the Commission believes the protocols in force<sup>39</sup> have achieved their aim. Every protocol foresees a Joint Committee where the EU and the third country agree on annual and multiannual objectives and monitors the use of sectoral support. All documentation relating to these activities is sent to the Secretariat of the EP's Fisheries Committee. In addition, publicly available ex-post evaluations are carried out by external consultants before the opening of negotiations on protocol renewals.<sup>40</sup>

On a related point, MEP José Blanco López stressed that fisheries agreements with third countries are faced with serious difficulties and that due to the [absence of FPA protocols](#) with certain countries and the imminent expiry of some others, the EU will soon be in a situation where there are no protocols in force with half of the states with whom the EU has fisheries agreements. He [asks](#) the Commission's position on this point and in particular on the denied access to Mauritanian grounds for the EU cephalopod fleet. The [Commission's reply](#) stresses that enabling the continuation of fishing activities of social and economic importance for the EU is a priority. Twelve protocols were in force in December 2014 and others are being negotiated, including with Mauritania. Yet for cephalopods, available scientific evidence indicates that stocks are still over exploited; in addition Mauritania has made it clear that it wishes to reserve these stocks to its national fleet. Hence there is no surplus available at this stage.

## 5. European Court of Auditors Special Reports

On 20 October 2015, the European Court of Auditors (ECA) released Special Report 11/2015 "[Are the fisheries partnership agreements well managed by the Commission?](#)" The Special Report examined the quality of the Commission's negotiations of FPAs and their protocols, and whether the Commission implemented FPAs well.<sup>41</sup> ECA concentrated on the 12 agreements in force at the time of the audit and for which a financial contribution was made

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<sup>37</sup> On this point, a [2013 article by Agritrade](#) notes that the proposed revision could ensure that all EU vessels abide by the same sustainability criteria, regardless of which framework they use (e.g. private licences, bilateral agreements, etc.) to undertake their fishing activities.

<sup>38</sup> Namely questions [E-010199/13](#), [E-010195/13](#), [E-010184/13](#), [E-010197/13](#), [E-010203/13](#), [E-010192/13](#), [E-010202/13](#), [E-010198/13](#), [E-010194/13](#), [E-010187/13](#), [E-010196/13](#), [E-010201/13](#), [E-010190/13](#), [E-010188/13](#), [E-010185/13](#), [E-010193/13](#), [E-010189/13](#), [E-010186/13](#), [E-010200/13](#), [E-010191/13](#).

<sup>39</sup> As explained in footnote 11, in some cases a protocol is not in force, hence EU vessels cannot access the EEZ of the country. This was the case of e.g. Mauritius and Solomon Islands.

<sup>40</sup> As indicated above, these evaluations can be accessed [here](#).

<sup>41</sup> For further details on the Special Report 11/2015, see also the forthcoming edition (March 2016) of the EPRS publication [Special Reports of the European Court of Auditors: A Rolling Checklist of recent findings](#).

from the EU budget.<sup>42</sup> The Special Report concluded that FPAs are overall well managed, although areas for improvement in the negotiation process and the implementation of protocols were identified. As regards Regulation 1006/2008, the Special Report noted that one of the main challenges for the Commission during complex FPA negotiations is to avoid interrupting the EU's fleet fishing activities. In this respect, the FAR Regulation (Art. 9) foresees a transitional regime to ensure the continuity of fishing operations for 6 months, when a negotiated protocol is not yet being applied. According to ECA however, Art. 9 might be inconsistent with the so-called "exclusivity clause" stipulating that once an FPA is in force, EU vessels are only allowed to operate in the waters of the partner country if they have a fishing authorisation issued under that FPA.<sup>43</sup> The Special Report also found that the fishing authorisations database required by Regulation 1006/2008 contains up-to-date information on existing licences, although improvements could be made in keeping track of the various steps of the licence application, so as to identify the cause of some of the delays observed in the past. The Report pointed to shortcomings in how the Commission manages catch data as required by Regulation 1006/2008, noting significant discrepancies with catch data provided by e.g. Member States and independent evaluations. Finally, the Special Report explained that the ex-post evaluations of individual FPAs are not always useful in the decision-making process and for (re)negotiations "due to the incomplete information being provided on the utilisation rates of the protocols, their lack of comparability and the absence of a critical analysis of the effectiveness of FPAs".<sup>44</sup>

The Committee on Budgetary Control (CONT) has prepared a working document on Special Report 11/2015<sup>45</sup> which was discussed during a CONT Committee meeting on 9 November 2015.

## 6. European Commission Stakeholder Consultations

In view of the prospected revision of the FAR, the European Commission held a public stakeholder consultation between April and July 2013. The consultation focused on the following aspects: opportunities to simplify and strengthen the existing framework; the objectives to be pursued with the proposed revision; problems with the current rules and their implementation; expected impacts of a FAR revision, including on IUU fishing; potential policy options and measures; the inclusion of private authorisations under the FAR; and the extent to which the FAR should cover or restrict the practice of reflagging. Thirteen contributions were received and most are publicly accessible on the Commission's website.<sup>46</sup> An official summary of the consultation results has not yet been provided by the Commission and will most likely constitute an integral part of the impact assessment accompanying the proposal. The publicly available contributions tend to converge on the need to revise and simplify Regulation 1006/2008 and on the problems identified by the European Commission. Yet, views differ significantly on some specific points, for instance on the question of reflagging, with e.g. NGOs suggesting specific measures to prevent abusive reflagging, while another stakeholder perceives the inclusion of requirements on reflagging in the FAR as a means to shift the burden of responsibility of law enforcement from the public to the private sector. Worthy of note is the response of the Spanish Secretariat-General

### The Spanish approach to private authorisations

Since the end of 2012, the Spanish authorities are piloting a verification system aimed at providing a level playing field between vessels operating under EU agreements and Spanish vessels fishing outside of an FPA. On top of the mandatory licencing from the third country, Spanish vessels fishing outside EU waters must obtain a temporary fishing permit from the Spanish administration. The permit includes the requirements for the application of all relevant EU and RFMO legislation, as well as the relevant national regulations. In addition, Spain draws on the network of Spanish embassies and EU delegations to verify licences allocated by third countries, demanding proof of payment to the Treasury of the country concerned, to ensure the validity and the authenticity of each licence. This provides an additional tool to combat illegal practices such as IUU fishing.

A similar approach, featuring a unique list of eligibility criteria to be verified by the Flag Member States, might be included in the forthcoming FAR revision in order to extend the scope of the current rules and cover all situations whereby an EU vessel is fishing outside EU waters.

<sup>42</sup> This contribution amounted to 69 million Euros in 2014 and 71 million Euros in 2015. See ECA Special Report 11/2015, p. 12.

<sup>43</sup> In its reply, the European Commission indicates that this inconsistency is not present, as the transitional period is foreseen only for agreed FPAs for which a protocol is not yet applied. As a result, the validity of licences obtained during the transitional period stems from the main text of the FPA. These licences differ from the case of "purely private licences". Ibid., p. 47.

<sup>44</sup> Ibid., p. 39.

<sup>45</sup> See PE569.796v01-00, draft of 5 November 2015.

<sup>46</sup> Published contributions come from: the Estonian Ministry of Environment; the Spanish Secretariat - General for Fisheries; two (similar) joint submissions by NGOs; two submissions by Oceana in Europe and Oceana Spain (this organisation is also among the signatories of the joint submissions by NGOs); a Polish North Atlantic producers/fishermen organisation; Greenpeace European Unit; an anonymous Spanish fishermen association (incomplete questionnaire), and one individual (fisherman) from the United Kingdom.

for Fisheries which describes a recently set up pilot system to facilitate the monitoring of IUU fishing and monitor private authorisations. The Spanish approach (see the text box) and has been indicated as a best practice.

## 7. Positions of the European Economic and Social Committee (EESC)

In its Opinion on the Reform of the CFP,<sup>47</sup> the European Economic and Social Committee recalls the weight of the EU in global fisheries and its significant responsibility in promoting sustainable fishing activities and the conservation of marine resources. This responsibility should also take into account social aspects, particularly when EU vessels engage in fishing activities in the waters of e.g. ACP countries. These activities should generate decent jobs for the local population. The EESC also welcomes the Commission's shift from FPAs to Sustainable Fisheries Agreements (SFAs) with a stronger focus on conservation, improved governance and effective sectoral support and considers that, in addition to the general objectives set out in the new generation of SFAs, the respect of workers' rights should be added to the criteria that companies operating under an SFA have to meet. However, the EESC notes with regret<sup>48</sup> that the Commission does not mention as an objective the preservation of the activities and jobs for the EU fleet operating under the SFAs. Finally, the EESC stresses that third-country vessels exporting their products to the EU should be required to meet the same social and environmental standards as the EU fleet.<sup>49</sup>

## 8. Conclusions

The implementation of Regulation 1006/2008 on fishing authorisations (FAR) indicates that the current system suffers from various shortcomings ranging from complex rules which are difficult to implement, to specific provisions contradicting other pieces of legislation, variability in the quality and quantity of data required from Member States, and limited deterrence of existing sanctions for breaching the FAR. In addition, abusive reflagging and the absence of a clear framework for private fishing authorisations undermine the objectives of the Regulation. In its 2011 Communication on the external dimension of the Common Fisheries Policies (CFP), the European Commission indicated that it would revise Regulation 1006/2008, particularly in view of recent regulatory developments on illegal, unreported and unregulated (IUU) fishing. A possible revision of the FAR is widely supported by the European Parliament, which put forward specific proposals reforming fishing authorisations in its Resolution of 22 November 2012 on the external dimension of the CFP.

## 8. Other sources of reference

Agri Trade, [Civil society organisations comment on access conditions for EU fleets fishing outside FPAs](#), 19 August 2013.

European Court of Auditors, [Have EU measures contributed to adapting the capacity of the fishing fleets to available fishing opportunities?](#), Special Report 12/2011.

EESC, [Opinion NAT/578 on North-East Atlantic deep-sea fishing](#), 13 February 2013.

Coalition for Fair Fisheries Arrangements, [We need to ensure coherence between rules applying to EU vessels fishing in EU waters and those fishing outside](#), Exchange of views with Alain Cadec, Member of the European Parliament, Chairman of the European Parliament Committee on Fisheries, 7 November 2014.

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<sup>47</sup> [EESC Opinion NAT/521](#) of 28 March 2012.

<sup>48</sup> *Ibid.*, point 3.7.9.

<sup>49</sup> *Ibid.*, point 3.7.11.