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# The control and enforcement of fisheries in France

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## Executive summary and recommendations

In 2009, the European Union (EU) adopted a new regulation, the "Control Regulation", to establish general rules and principles governing the control of fisheries across its Member States. This regulation entered into force in 2010. It places a number of enforcement obligations on Member States' competent authorities:

- Ensuring that appropriate measures are taken for every breach of the rules of the Common Fisheries Policy (CFP);
- Imposing sanctions which are effectively dissuasive in case of serious infringements;
- Establishing a penalty point system for licence holders and masters of fishing vessels who commit a serious infringement of the rules of the CFP;
- Entering into a national register all infringements of the rules of the CFP.

It is now seven years after the entry into force of the Control Regulation, and ClientEarth was unable to find an assessment of the extent to which France is complying with these requirements. Therefore, through desk-based research and stakeholders interviews we endeavour through this case study to assess France's degree of implementation.

The organisation of fisheries controls in France relies on a large number of authorities competent at the local, regional or national levels. Several authorities have the power to control fishing vessels at sea or at point of landing and to establish so-called "procès-verbaux" when infringements to the applicable regulations are detected. The conduct of inspections is also governed by several legislative and non-legislative instruments, such as the national charter of control which was adopted in consultation with the fishing sector.

Once the "procès-verbaux" are established, administrative and/or criminal proceedings can take place. Administrative sanctions can take the form of fines, suspension or withdrawal of fishing licences or assignation of penalty points to the licence holder or to the master of the fishing vessel. In this respect, the obligations of the Control Regulation relating to the overall level of fines and to the penalty point system for serious infringements have been introduced into French law. France has also defined a highly complex set of national criteria to determine what infringements fall under the category of serious infringements.

Criminal proceedings may take place in isolation or in combination with administrative ones. The sanctions imposed by the Courts can be both fines and imprisonment if the infringement takes place within the limits of the French territorial sea (12 nautical miles). If the infringement takes place outside this boundary, then only fines can be imposed, according to a 2014 amendment to the French Rural and Maritime Fisheries Code.

A 2011 order has also established the French national register of infringements.

In practice, data gathered in the course of this study has shown that the number of controls, both at sea and upon landing, has decreased these past years. For example, there was a 13.5% decrease of inspections between 2014 and 2015, according to the numbers reported by the French Fisheries Monitoring Centre. The decrease was of 5.1% in 2016.

There is no consolidated and publically available data on the exact number of infringements that occur every year in France. Competent authorities report from time to time on the number of "procès-verbaux" they establish, but the figures provided differ from one authority to another. Overall, it seems that the total number of "procès-verbaux" established is around 1,000 per year.

The establishment of a "procès-verbal" does not mean that there will be, in the end, an administrative or a criminal sanction imposed. There is no publically available data on the exact number of administrative sanctions imposed by the competent authorities and evidence gathered during this study suggests that their overall level is low (i.e. fines were below 1,000 Euros for all instances mentioned). There is no evidence that the penalty point system is effectively applied by the authorities.

More detailed and public data exist for criminal sanctions, although these numbers must be handled with care as the exact scope of the reports made by the Ministry of Justice is not known. In most cases, out-of-court settlements are the preferred option to deal with fisheries infringements: these represented 89.1% of the outcomes of fisheries-related criminal cases in France in 2014. When a case goes in front of a court, the most common sanction is a fine, and the average of the fines imposed was 1,675 Euros in 2014. Evidence gathered during this study also suggests that the French Courts have been more severe when imposing sanctions on foreign fishing vessels operating illegally in the French waters.

In light of these findings, the study concludes with a series of recommendations:

- **Increase the number of controls at sea and improve controls on landings.** Despite budgetary and external constraints, it is important to maintain a high level of controls at sea, as they are more efficient at detecting infringements. Additionally, several stakeholders interviewed to prepare this study suggested that controls on landing should be improved, and it must be ensured that they are conducted properly.
- **Reintroduce the possibility of applying both fines and imprisonment.** The French Rural and Maritime Fisheries Code was modified in 2014 and now states that only infringements committed within the French territorial sea can lead to prison sentences. This is in clear contradiction with the United Nations Convention on the Law of the Sea, to which France is a Contracting Party.
- **Simplify fisheries control and enforcement procedures and increase the coordination of competent authorities.** As a high number of authorities are involved in the control of fisheries in France, there is a risk of diverging or competing interests between them. In addition, guidance should be provided on the use of criminal and administrative sanctions to ensure a level playing field within the country.
- **Adjust the level of sanctions so as to be a real deterrent.** Information collected throughout this study shows that the level of sanctions in France is quite low, in contradiction with the requirements of the Control Regulation. In addition, official guidance must be provided to the administrative and judicial competent authorities to ensure that they are imposing sufficiently deterrent sanctions.
- **Increase transparency through the availability and reliability of implementation data.** Not only most of the data is not publically available, but it was also sometimes contradictory. Publishing consolidated data on fisheries infringements and sanctions would help to build trust amongst the fishing communities operating within France and across Europe and ultimately ensure that the level-playing field necessary to promote a culture of compliance actually exists.

## Introduction

Fisheries controls and enforcement have been a subject of dispute between France and the European Union (EU) institutions for a long time. In 1991, the Court of Justice of the European Union (CJEU) condemned France for failing to fulfil its obligations under a number of fisheries control regulations, most specifically regulations aiming at protecting undersize fish (hake in particular).<sup>1</sup> In its judgment, the CJEU noted that *"from 1984 to 1987 the French Government did not carry out controls ensuring compliance with the technical measures of conservation in question"* and that *"since infringements which the national authorities could have found to exist were not recorded and since the offenders were thus not charged, the French Government also failed to fulfil its obligation to take action as required by the control regulations"*.

France was then given a timeframe to remedy the situation, but because problems persisted, the European Commission (EC) launched a new action in 2002. The CJEU delivered its judgment in 2005, declaring that France has effectively failed to fulfil its obligations and ordering the French Government to pay a penalty payment of 316,500 Euros for each day of delay in implementing the measures necessary to comply with the 1991 judgment.<sup>2</sup> In particular, the Court noted that *"it is clear from the information provided by the French Government that proceedings are not brought in respect of all the infringements that are recorded. It is also apparent that deterrent penalties are not imposed in respect of all the infringements in respect of which proceedings are brought"*.

The judicial saga did not stop there as, on 1 March 2006, the Commission asked France to pay a fine of 57.77 million Euros for failure to comply with the Court 2005 judgment.<sup>3</sup> In a last attempt to challenge this decision, France lodged a complaint against the Commission in front of the CJEU. This case was dismissed in 2011 and France was ordered to pay the entire penalty.<sup>4</sup>

Reviewing these cases serves to shed some light on the issue of fisheries control and enforcement in France. While France was appealing the 2006 fine, the EU adopted a new "Control Regulation",<sup>5</sup> which entailed numerous changes to the system of control over a period of a few years. It still remains to be assessed whether France is operating in line with the requirements contained in the current control-related legislation.

This concern was highlighted in 2012 by the French Court of Auditors. In a letter to the ministers in charge of fisheries,<sup>6</sup> the Court expressed a number of criticisms against the organisation of fisheries controls in France, stating that despite the efforts made since 2006, further progress needs to be made.

In light of this context, this case study focuses on the implementation to date of a number of requirements contained in the Control Regulation and in another important piece of fisheries legislation, aimed at fighting Illegal, Unreported and Unregulated (IUU) fishing - the IUU

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<sup>1</sup> Case C-64/88, *Commission of the European Communities v. French Republic*.

<sup>2</sup> Case C-304/02, *Commission of the European Communities v. French Republic*. Because this case concerned undersize hake, it is widely known as "Arrêt Merluchon" ("small hake case" in French).

<sup>3</sup> Commission Decision C(2006) 659 final of 1 March 2006 seeking payment of penalty payments due in compliance with the judgment of the Court of Justice in case C-304/02, *Commission of the European Communities v. French Republic*.

<sup>4</sup> Case T-139/06, *French Republic v. European Commission*.

<sup>5</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

<sup>6</sup> French Court of Auditors, Référé No 64384 of 12 July 2012 on the control of maritime fisheries.

Regulation.<sup>7</sup> Of particular interest is Title VIII of the Control Regulation which deals with enforcement and requires Member States to have in place a system ensuring that breaches of the Common Fisheries Policy (CFP) rules are identified and sanctioned. A general discussion on the implementation of this Title can be found in a summary document highlighting common themes found in this and five other case studies conducted in England, Ireland, the Netherlands, Poland and Spain.<sup>8</sup>

## 1 The French fisheries enforcement framework

In France, general rules on the organisation of fisheries controls and enforcement are adopted through laws and regulations, and then compiled in a code, the Rural and Maritime Fisheries Code.<sup>9</sup> The code is completed by administrative acts, enacted by a variety of competent authorities at the national or local levels.

### 1.1 The organisation of fisheries controls

According to the Rural and Maritime Fisheries Code, administrative fisheries controls can be conducted to ensure the respect of: (a) the rules contained in the Rural and Maritime Fisheries Code; (ii) the rules contained in the EU regulations adopted to implement the CFP; (iii) France's international commitments and subsequent regulations adopted to implement them; (iv) deliberations of regional and national committees for maritime fisheries and shellfish and fish farming made legally binding through a decision of the competent authorities.<sup>10</sup> In addition to the administrative controls, judicial ones can also take place, where inspectors will more specifically try to find out if an infringement took place.

The organisation of these controls themselves relies on a rather complex web of competent authorities and is governed by a large number of legislative and administrative acts. The most relevant of them are a 2000 Circular on the general organisation of maritime fisheries and fishery products controls<sup>11</sup> and a 2015 Instruction on the operational coordination of the control regime applicable to the CFP.<sup>12</sup> According to these legal instruments, authorities from different levels are involved in the planning and conduct of controls:

- At the national level, the Directorate for Maritime Fisheries and Aquaculture of the Ministry of Ecology, Sustainable Development and Energy ("Direction des Pêches Maritimes et de l'Aquaculture" or DPMA) adopts every two years a national control plan for fishery products. This plan is a framework establishing general objectives, priorities and guidelines for the conduct of control operations. For example, the respect of reporting obligations is identified as being the priority objective under the 2016-2017 plan.<sup>13</sup>

<sup>7</sup> Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

<sup>8</sup> <https://www.documents.clientearth.org/library/download-info/slipping-through-the-net-the-control-and-enforcement-of-fisheries-in-england-france-ireland-and-poland/>.

<sup>9</sup> "Code Rural et de la Pêche Maritime", available at: <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071367>.

<sup>10</sup> Article L941-1 of the Rural and Maritime Fisheries Code.

<sup>11</sup> *Circulaire du Premier ministre du 8 septembre 2000 relative à l'organisation générale du contrôle des pêches maritimes et des produits de la pêche*, Journal Officiel de la République Française (JORF) n°222 of 24 September 2000, p. 15045.

<sup>12</sup> *Instruction du Gouvernement du 17 février 2015 relative à la coordination opérationnelle du régime de contrôle applicable à la politique commune des pêches*.

<sup>13</sup> *Note technique du 30 mai 2016 relative au plan national de contrôle des produits de la pêche maritime et de l'aquaculture marine bisannuel 2016-2017*.

- At the regional level, Interregional Directorates for the Sea ("Directions Interrégionales de la Mer" or DIRM) and Directorates for the Sea ("Directions de la Mer" or DM, competent in overseas departments) define interregional or regional plans for the control of fisheries, based on the general orientations provided in the national plan. In landlocked regions, there is no DIRM or DM and the competent authorities adopt guidelines to control the supply chain of seafood products.
- At the local level, the control can be carried out by a large number of authorities, depending on their respective area of competence and on the nature of the controls themselves. The list of the competent authorities, both for administrative and judicial controls, is given in the Rural and Maritime Fisheries Code.<sup>14</sup> In practice, most of the controls are conducted by: (a) the maritime affairs administration (mostly coastal and Exclusive Economic Zone (EEZ) controls); (b) the customs (throughout the supply chain); (c) the French navy (on the high seas and in the Indian Ocean); (d) the national and maritime gendarmerie (in coastal waters).<sup>15</sup>

In addition, a national centre, the "Centre National de Surveillance des Pêches" or CNSP, has been established in Etel, in Brittany. The CNSP is in charge of coordinating the controls organised at sea and of helping the coordination of controls on landings.<sup>16</sup> It has also been designated as the "Fisheries Monitoring Centre" or FMC under the EU Control Regulation. As such, it is responsible for collecting and processing Vessel Monitoring System (VMS) and Electronic recording and reporting system (ERS) data.

The officials in charge of controls operations must respect the principles found in the Rural and Maritime Fisheries Code.<sup>17</sup> In addition to this legislative framework, the DPMA adopted in 2006 a national charter for the control of fisheries ("Charte nationale du contrôle"), which defines principles that officials have to respect when they are planning or conducting control operations. It is clearly stated in the Charter that, before any control, the inspector has to systematically find out the date of the last control and its outcome. If the fisher or the product holder has already been inspected in the past 30 days, then the inspector avoids the inspection, except in the following cases: (a) flagrant infringements, (b) if there is serious evidence that an infringement has been or is being committed, or (c) if there is a need to reach the control objectives set in the European legislation.

When an official in charge of control determines that an infringement has taken place, then the procedure differs, depending on whether the official decides to apply a criminal or an administrative sanction, or both.

In case of criminal proceedings, the inspector sends a report ("procès-verbal") to the public prosecutor, together with any evidence of the infraction. He also sends these documents to the competent DIRM, which then transmits its advice on the need to pursue the criminal proceedings to the prosecutor. In the end, the public prosecutor is in charge of deciding what to

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<sup>14</sup> For administrative controls, the list of competent authorities is available under Articles R941-1 to R941-4 of the Code. For controls aiming at researching and finding infringements, the list is provided in Articles L942-1 and L942-2 of the Code.

<sup>15</sup> The Gendarmerie is a national military force in charge of a number of civil police functions. It also has several specialised branches, including one on maritime affairs.

<sup>16</sup> The missions of the CNSP are defined in the "[Arrêté du 17 avril 2012 relatif à l'organisation et aux missions du Centre national de surveillance des pêches](#)" and in the "[Circulaire du 24 juin 2013 relative à l'organisation des missions du Centre national de surveillance des pêches](#)".

<sup>17</sup> And notably Articles L941-1 to L942-9 of the Rural and Maritime Fisheries Code.



do next: engage formally through criminal proceedings, propose alternative measures or drop the case.

In case of administrative proceedings, the inspector establishes a formal report, which is then reviewed by the local competent administrative authorities. The offender has a time limit to present its observations and be heard by the authorities. After this delay, the DIRM, acting upon delegation from the regional prefect ("Préfet") can impose an administrative sanction. The competent administrative authority is the only actor involved in the decision on whether to sanction the offender; it can decide not to begin proceedings to administer a sanction, even when an infringement has clearly been committed.

## 1.2 The French measures available for fisheries enforcement

Fisheries enforcement in France is based on a combination of provisional measures, which can be adopted before any sanction is pronounced, and of administrative and/or criminal sanctions. Administrative and criminal sanctions are not exclusive of each other; both can be imposed for the same infringement. As the French Constitutional Council stated, they must nevertheless be imposed in such way that the total amount of sanctions cannot exceed the maximum amount that can be incurred under either type of sanction.<sup>18</sup>

### 2.2.1 Provisional measures

An entire Chapter of the Rural and Maritime Fisheries Code is dedicated to provisional measures.<sup>19</sup> It establishes a procedure through which the competent authorities can seize all instruments used to fish or to transport illegal fishery products, the money received in payment of these products, and all prohibited fishing gears and instruments.<sup>20</sup>

The seizure can concern the fishing vessel or floating craft used to commit the infringement as well as the vehicle used to transport the illegal products. In this case, in the following three days, a judge has to confirm this seizure, or subject the release of the vessel or vehicle to the payment of a bond, or decide to release it without any condition. That same judge may also order the destruction of the vessel, floating craft or vehicle if they represent a risk for the person's security or for the environment.

Prohibited fishing gears and instruments can be confiscated, destroyed, sold, given to maritime schools or returned to their owner. This decision is taken after their seizure by the competent judge or by the administrative authority competent to impose a sanction.

Seized illegal fishery products can be sold, given, destroyed, or, if alive, returned back to the sea. If the products were sold before the seizure, the competent authority can seize the money received in payment.

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<sup>18</sup> Constitutional Council, 28 July 1989, *Loi relative à la sécurité et à la transparence du marché financier*, décision No 89-260.

<sup>19</sup> Chapter III of the Rural and Maritime Fisheries Code.

<sup>20</sup> Articles L943-1 to L943-10 of the Rural and Maritime Fisheries Code.



## 2.2.2 Administrative sanctions

Although France has a mixed criminal and administrative sanctioning system, the use of administrative sanctions seems to be the preferred option in case of fisheries regulations violations.<sup>21</sup>

The general rules regarding administrative sanctions for violations of fisheries laws in France are found in a dedicated chapter of the Rural and Maritime Fisheries Code.<sup>22</sup>

Breaches of applicable fisheries laws can be sanctioned by one or more of the following penalties:

- An administrative fine of a maximum of either (a) five times the value of the products obtained in violation of the rules; (b) 1,500 Euros when the first case is not applicable. If the amount of fishery products illegally obtained is of more than 100 kilos, then the amount of the fine is multiplied by the number of quintals concerned. Equally, if the sanction concerns a violation of satellite surveillance rules which lasted more than one hour, then the fine is multiplied by the number of hours spent in violation of these rules. If there are violations of reporting requirements, then the fine is multiplied by the number of times these requirements were violated. The French legislator also went beyond the requirements set out in Article 44(2) of the IUU Regulation<sup>23</sup> and established that the amount of the fine can be doubled in case of repetition of the violation in the next five years. In accordance with Article 90(4) of the Control Regulation, there is also a provision in the Code stating that the level of the fines shall be fixed so as to take into account the value of the prejudice to the fishing resources and the marine environment concerned;<sup>24</sup>
- The suspension or withdrawal of the fishing licence or of the fishing authorisation. This possibility existed into French law before the introduction of the penalty point system foreseen by the Control Regulation. As a sanction, it can in theory be adopted independently from the attribution of penalty points;
- The assignation of penalty points to the licence holder or to the captain of the fishing vessel, as well as their registration in the national register of infringements;
- The suspension or withdrawal of an authorisation to exploit marine culture concessions or aquaculture installations;
- The publication of the entire decision or of an extract of that decision.

These penalties are applicable to all kind of infringements, except the assignation of penalty points, which can only be attributed in cases of serious infringements.

Serious infringements are defined in Articles R946-4 to R946-16 of the Rural and Maritime Fisheries Code, which were introduced into French law in 2014.<sup>25</sup> There has been a four year

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<sup>21</sup> See Bigorgne M. (2014), *Les sanctions administratives à la pêche: Enjeux et conséquences de la judiciarisation*, Ecole d'Administration des Affaires Maritimes, accessed at: <http://www.ecole-affaires-maritimes.fr/images/memoires/41.pdf>.

<sup>22</sup> Articles L946-1 to L946-8 of the Rural and Maritime Fisheries Code.

<sup>23</sup> Article 44 (2) of the IUU Regulation: "*The Member States shall impose a maximum sanction of at least five times the value of fishery products obtained by committing a serious infringement. In case of a repeated serious infringement within a five-year period, the Member States shall impose a maximum sanction of at least eight times the value of the fishery products obtained by committing the serious infringement*".

<sup>24</sup> Article L946-4 of the Rural and Maritime Fisheries Code.

<sup>25</sup> They were introduced into French law through [Decree n° 2014-54 of 24 January 2014](#) ; and then introduced into the Rural and Maritime Fisheries Code through [Decree n° 2014-1608 of 26 December 2014](#).

delay in the implementation of the requirements of the IUU and Control Regulations with respect to serious infringements.

The definitions of serious infringements themselves are rather complex. They are based on the twelve categories of serious infringements detailed in Annex XXX of the Control Regulation Implementing Regulation.<sup>26</sup> Out of these twelve categories of infringements, five are always considered as being serious infringements under French law, without any other condition:

- Number 3: falsification or concealing of markings, identity or registration;
- Number 4: concealing, tampering or disposal of evidence relating to an investigation;
- Number 10: obstruction of work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures or the work of observers in the exercise of their duties of observing compliance with the applicable Union rules;
- Number 11: transshipping to, or participating in, joint fishing operations which support or re-supply fishing vessels identified as having engaged in IUU fishing under the IUU Regulation;
- Number 12: use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law.

For all the other categories mentioned in Annex XXX of the Control Regulation Implementing Regulation, at least one additional condition has to be fulfilled for the infringement to be considered as serious.

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<sup>26</sup> Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

	1 Violation of reporting obligations <sup>27</sup>	2 Non compliant gear <sup>28</sup>	5 Undersize fish <sup>29</sup>	6 Violation of RFMO measure <sup>30</sup>	7 Invalid licence <sup>31</sup>	8 Closed area or season <sup>32</sup>	9 Closed fishery <sup>33</sup>
In case of a fishing operation, transshipment or landing of a species regulated or prohibited for quantities above 100 kg or of more than 20% of quantities mentioned in the logbook, transshipment declaration or landing declaration.	✓						
In case of a fishing operation for, a transshipment of, or the landing of a regulated or prohibited species for quantities above 100 kg or of more than 20% of the catch.			✓	✓		✓	✓
In the course of fishing operations in a	✓			✓	✓		

<sup>27</sup> Category 1 concerns the non-fulfilment of obligations to record and report catch or catch related data, including data to be transmitted by satellite vessel monitoring system.

<sup>28</sup> Category 2 is the use of prohibited or non-compliant gears.

<sup>29</sup> Category 5 is taking on board, transshipping or landing of undersize fish in contravention of the legislation in force.

<sup>30</sup> Category 6 covers carrying out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation.

<sup>31</sup> Category 7 is fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State.

<sup>32</sup> Category 8 is fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth.

<sup>33</sup> Category 9 is the directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.

closed area, at a closed depth or during a closed period.							
In the course of a fishing operation outside French or EU waters.	✓	✓	✓		✓	✓	✓
At the same time of a recording error of more than 20% in weight or in number of species regulated in the fishing logbook, the transshipment declaration, the transfer declaration or the landing declaration.	✓		✓	✓			
These breaches are found three times within three consecutive months.	✓						
The sales value of the catches realised in violation of applicable laws is of more than 10,000 Euros or represents at least 20% of the total value of the catches made in the course of the shipping trip in the course of which the infringements	✓		✓	✓	✓	✓	✓

were committed.							
When using a fishing gear whose mesh size is smaller than the legal size of at least 2 millimetres.		✓		✓	✓		
When using a number of fishing gears or devices higher of at least 10% than the authorised number.		✓		✓			
If the length of the fishing gear or device is more than 10% larger than the authorised length.		✓		✓			
When using a device altering severely the selectivity of the fishing gear.		✓		✓			

If a serious infringement is committed, then a number of penalty points can be attributed to both the licence holder and to the master of the fishing vessel.<sup>34</sup> For fishing licence holders, a reference to the relevant EU provisions regarding the functioning of the penalty point system is made in Article R946-4 of the Code. Such reference is not sufficient for masters of fishing vessels, as the Control Regulation leaves it up to Member States to determine under which conditions the point system will apply to them.<sup>35</sup> For that reason, Articles R946-18 to R946-21 of the Code give more details regarding the application of the point system to masters. The provisions are the same as the ones foreseen for fishing licence holders in the Control Regulation and its Implementing Regulation. The only slight difference is the fact that 18 penalty points will trigger only one month of suspension and not two, as is the case for the fishing

<sup>34</sup> Article R946-4 of the Rural and Maritime Fisheries Code.

<sup>35</sup> Article 92 (6) of the Control Regulation: "Member States shall also establish a point system under which the master of a vessel is assigned the appropriate number of points as a result of a serious infringement of the rules of the common fisheries policy committed by him".

licence holder; and as a result, a new threshold of 63 points was introduced to trigger the eight month suspension.<sup>36</sup>

In addition, it should be noted that producers' organisations, as well as the national and regional branches of the National Committee for Maritime Fisheries and Fish Farming, can also, to a certain extent, impose sanctions such as a fine or the suspension/withdrawal of the fishing licence or authorisation.<sup>37</sup>

### 2.2.3 Criminal sanctions

Criminal sanctions are listed in the Rural and Maritime Fisheries Code.<sup>38</sup> In addition to classic criminal sanctions such as imprisonment and monetary sanctions, these provisions also include complementary sanctions, such as the publication of the sentence, the suspension or withdrawal of the fishing licence or authorisation, the seizure or forfeiture of fishing gears, devices or vessels used in the course of the infringement, the suspension from the right to exercise a professional activity such as the command of a vessel, or company dissolution.<sup>39</sup>

The maximum sanction is 2 years imprisonment and a 375,000 Euros fine. It can be pronounced only in very few specific cases:

- when the offender is destroying or attempting to destroy seized fishing gears, devices or products;
- when the offender is trying to obstruct the seizure of these products; or
- when the offender is not sending the seized products to the place the competent authorities decided they should be sent to.<sup>40</sup>

The code also foresees a sanction of a maximum of one year imprisonment and a 75,000 Euros fine that can be applied for cases relating to:

- the falsification or concealing of the identification of a vessel;
- attempts to escape controls while at sea;
- the exploitation, management or possession of fishing vessels that are not registered, or are included on an IUU list, or are flagged in a third country listed as non-cooperating under the EU IUU Regulation.<sup>41</sup>

Six months of prison and a 15,000 Euros fine can also be sentenced in cases of obstruction of the work of officials during control operations.<sup>42</sup>

All the cases of non-compliance listed above are very severe infringements of existing regulations, hence why they can be punished by both fines and imprisonment. Most of the other

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<sup>36</sup> Article R946-18 of the Rural and Maritime Fisheries Code.

<sup>37</sup> Articles L946-7 and L946-8 of the Rural and Maritime Fisheries Code.

<sup>38</sup> Articles L945-1 to L945-5 of the Rural and Maritime Fisheries Code.

<sup>39</sup> Article L945-5 of the Rural and Maritime Fisheries Code.

<sup>40</sup> Article L945-1 of the Rural and Maritime Fisheries Code.

<sup>41</sup> Article L945-2 of the Rural and Maritime Fisheries Code.

<sup>42</sup> Article L945-3 of the Rural and Maritime Fisheries Code.

infringements are punishable by a fine of a maximum amount of 22,500 Euros.<sup>43</sup> This category defines 22 different infringements such as fishing without a licence, fishing in a closed area or during a closed season, fishing with prohibited gears or substances, the non-respect of reporting obligations, the marketing of products illegally caught or the non-respect of the landing obligation.

Finally, and surprisingly, Article L945-4-1 of the Code states that, for any of the above-mentioned infringements committed beyond the limits of the territorial sea (12 nautical miles),<sup>44</sup> only fines can be applied, therefore excluding the possibility to impose imprisonment sanctions.

This article was introduced in the Rural and Maritime Fisheries Code through an amendment tabled by the French Government to a 2014 law on agriculture.<sup>45</sup> As a reason to introduce this provision, the French Government underlined the need to put the French legislation in line with the United Nations Convention on the Law of the Sea (UNCLOS), to which France is a Party. Their argument was based on Article 73.3 of UNCLOS, which states that "*coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment*".

The French Government's argument was based on an incorrect interpretation of Article 73.3 of UNCLOS. Actually, Article 73.3 deals with penalties which can be imposed by a State in its role as a "coastal State". Concretely, it means that, if a vessel flagged to a third country is operating in the EEZ<sup>46</sup> of a coastal State that is not its flag State, and it violates the fishery regulations of that coastal State, it is not possible for the coastal State to imprison the offenders, unless there is a specific agreement with the flag State to do so. So with Article L945-4-1 of the Rural and Maritime Fisheries Code, France is confusing its role as a flag State and its role as a coastal State. There is nothing in UNCLOS which prevents flag States from imprisoning their nationals when they violate fisheries regulations outside the territorial sea. On the contrary, as recalled by a recent advisory opinion of the International Tribunal for the Law of the Sea (ITLOS), "*sanctions applicable to involvement in IUU fishing activities must be sufficient to deter violations and to deprive offenders of the benefits accruing from their IUU fishing activities*".<sup>47</sup> In addition to that, France went even further than what it thought were the requirements of UNCLOS by prohibiting the adoption of imprisonment sanctions not only in its EEZ, but to all areas beyond its territorial sea - including therefore the high seas and the waters of other third countries - without even leaving open the possibility to negotiate bilateral agreements with the third countries which could be concerned by violations committed by French vessels or nationals.

## 2.2.4 The national register of infringements

The creation of the national register of infringements, required by Article 93 of the Control Regulation, was enacted through an order of 3 November 2011.<sup>48</sup> It gathers data relating to both

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<sup>43</sup> Article L945-4 of the Rural and Maritime Fisheries Code.

<sup>44</sup> According to Article 3 of the United Nations Convention on the Law of the Sea (UNCLOS), the territorial sea extends to a maximum limit of 12 nautical miles from the baselines (the coast) of the Coastal State.

<sup>45</sup> Law n° 2014-1170 of 13 October 2014.

<sup>46</sup> As defined by UNCLOS, the EEZ is an area beyond and adjacent to the territorial sea, for a maximum extension of 200 nautical miles from the baseline. In this area, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural living and non-living resources of the water column and of the seabed and its subsoil.

<sup>47</sup> International Tribunal for the Law of the Sea, Case No 21, Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), §138.

<sup>48</sup> Arrêté du 3 Novembre 2011 portant création d'un registre national des infractions à la politique commune de la pêche.



criminal and administrative sanctions adopted in cases of infringements of CFP rules by vessels flagged in France or by French nationals. The national register also includes information on the penalty points applied, if any, in case of administrative sanctions. However, somewhat ironically, the penalty point system itself was only introduced into French law in 2014, three years after the adoption of the order on the register.

Access to the data contained in the register is tightly restricted; only a few civil servants are able to consult it.<sup>49</sup> The data is stored in the system for a maximum duration of 5 years after the last administrative or judicial decision has been adopted.<sup>50</sup> This is two years longer than the three years minimum period foreseen in Article 93.4 of the Control Regulation.

According to a 2014 European Parliament Study, this register seems to be effectively implemented as the authors note that *"data on infringements are stored on a dedicated secure online tool as well as on the Ministry's internal network"*.<sup>51</sup>

## 2 What is happening in practice?

This case study has so far summarised how the French system of control is meant to work. This section will look at how the French system of control is working in practice, and in particular, how effective the system seems to be in fulfilling the requirements set in the EU Control and IUU Regulations.

### 2.1 Inspections

Every year, the CNSP publishes an annual activity report in which it details the control activities that took place during the previous year.<sup>52</sup> For 2015, the report indicates that 4,775 inspections were conducted in metropolitan France. Compared to 2014, this represents a 13.5% decrease in the number of inspections. The authors explain this figure by the fact that some resources previously available for the control of fisheries were re-allocated to security missions, following the 2015 terror attacks in France.<sup>53</sup> There was also a decrease of 5.1% in 2016, where the total number of inspections was 4,531.<sup>54</sup> Numbers are less accurate for inspections conducted in French overseas departments and territories.<sup>55</sup> According to the 2015 report, at least 796 inspections took place there in 2015.

Of the 4,531 inspections that took place in metropolitan France in 2016, 2,372 were sea or air inspections and 2,159 were inspections on landings. According to the EU Fleet Register, there were 6,834 fishing vessels active in metropolitan France as of 31 December 2016.<sup>56</sup> Concretely, this means that only a third of the vessels were likely to have been inspected at sea during the

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<sup>49</sup> Article 6 of the 2011 Order.

<sup>50</sup> Article 7 of the 2011 Order.

<sup>51</sup> Blomeyer & Sanz (2014), *Illegal, Unreported and Unregulated Fishing: Sanctions in the EU*, Study, European Parliament, p.51.

<sup>52</sup> Bilan d'activités CROSSA Etel 2015.

<sup>53</sup> According to the "Bilan d'activités CROSSA Etel 2014", in 2014, the number of controls was 5252, and was already a decrease of 12.7% from the previous year. Based on discussions with various stakeholders, it seems that this decrease has affected mostly the means of the Gendarmerie Maritime.

<sup>54</sup> Bilan d'activités CROSSA Etel 2016.

<sup>55</sup> For example, the report does not mention any inspection upon landing in Guadeloupe. For Mayotte, it only gives the number of "procès-verbaux" established by authorities other than the Maritime Affairs, and not the total number of inspections. French overseas departments (Martinique, Guadeloupe, La Réunion, Mayotte, and French Guiana) are part of the European Union. French overseas territories are not: this includes New Caledonia, French Polynesia, Wallis and Futuna and St Pierre and Miquelon. They are Overseas Countries and Territories (OCTs) in the sense of Part IV of the Treaty on the Functioning of the European Union.

<sup>56</sup> See [http://www.insee.fr/fr/themes/tableau.asp?ref\\_id=NAtnon10306](http://www.insee.fr/fr/themes/tableau.asp?ref_id=NAtnon10306).

year. This number is merely an estimate, as it also depends on other criteria such as risk analysis, inspection benchmarks, number of foreign fishing vessels controlled, etc.

In the meantime, different figures are provided by the DPMA. In a budgetary report,<sup>57</sup> it indicates that 17,435 controls took place in 2015. This number encompasses controls at sea, controls upon landing/transport and controls throughout the supply chain. Therefore, the scope of the budgetary report is a bit larger than the scope of the CNSP reports, which do not look at controls throughout the supply chain. This may explain the large difference between the numbers provided in this document and the ones provided by the CNSP, which are of 4,775 inspections for the year 2015, less than a third of the figure provided in the budgetary report!

## 2.2 Infringements

Official documents usually report on "procès-verbaux" established, not on the actual number of infringements discovered. Indeed, control authorities enjoy a certain amount of discretion in this respect and do not always have to report the cases of infringements that they discover: sometimes, they merely remind the operators they have inspected of the relevant regulations. In addition, one procès-verbal can deal with several infringements discovered in the course of the same operation.

As is already the case for control figures, the numbers of "procès-verbaux" reported every year used to vary depending on the sources analysed. According to the CNSP report, in 2014, there was 682 "procès-verbaux" established in metropolitan France and 295 in French overseas departments and territories: a total of 977 "procès-verbaux" established in France. For that same year, the budgetary document states, according to the DPMA, that 1,154 "procès-verbaux" were established, a clearly different number than the one provided by the CNSP - perhaps due to the larger scope of control retained in the budgetary document.<sup>58</sup> Out of these 1,154 "procès-verbaux", 790 concerned infringements at sea, 132 infringements regarding landings and 151 infringements found in the supply chain.<sup>59</sup> This is a decrease compared to the numbers of infringements found in 2013 (818 at sea, 720 on landing and 151 in the supply chain). The 2013 numbers were already a decrease compared to the 2012 figures.

The last budgetary report issued by the French competent authorities do not longer contain different numbers than the ones provided by the CNSP and only references "procès-verbaux" for infringements detected at sea or on landing in 2015. The numbers provided for the year 2014 are nevertheless different than the ones provided in the same report the year before.

It must also be highlighted that the two reports mentioned above do not clarify whether the "procès-verbaux" established actually lead, in the end, to administrative or criminal proceedings. The only publically available figures which exist on that issue are from the French Ministry of Justice and concern criminal proceedings for infringements to maritime fisheries laws and regulations.<sup>60</sup> The numbers provided in this report are surprisingly high. According to them, in 2014, the public prosecutors dealt with 2,964 cases of natural or legal persons suspected of having committed an infringement to maritime fisheries laws and regulations. A "procès-verbal"

<sup>57</sup> See: [https://www.performance-publique.budget.gouv.fr/sites/performance\\_publique/files/farandole/ressources/2017/pap/html/DBGPGMOBJINDPGM205.htm](https://www.performance-publique.budget.gouv.fr/sites/performance_publique/files/farandole/ressources/2017/pap/html/DBGPGMOBJINDPGM205.htm).

<sup>58</sup> See: [https://www.performance-publique.budget.gouv.fr/sites/performance\\_publique/files/farandole/ressources/2016/pap/pdf/DBGPGMPPGM205.pdf](https://www.performance-publique.budget.gouv.fr/sites/performance_publique/files/farandole/ressources/2016/pap/pdf/DBGPGMPPGM205.pdf).

<sup>59</sup> A bizarre thing is that the addition of all these numbers gives 1073, a different number than the total of 1154 provided by the DPMA.

<sup>60</sup> See: [http://www.justice.gouv.fr/art\\_pix/infostat\\_138\\_20151209.pdf](http://www.justice.gouv.fr/art_pix/infostat_138_20151209.pdf). The numbers contained in this paper are taken from statistics of the "Observatoire National de la Délinquance et des Réponses Pénales".

had been established for these reported cases. The public prosecutors dropped the case in 19.6% of cases, for reasons such as eventual inability to prove the existence of the infringement, the lack of characterisation of the infringement, or the fact that the defendant was not the perpetrator of the infringement. Conversely, criminal proceedings were established for 2,382 cases, twice as much as the number of "procès-verbaux" reported by the DPMA.

Of course, bias has to be taken into account. The numbers from the French Ministry of Justice could be higher because the scope of their report is larger and encompasses infringements and/or control authorities which are not included in the reports from the CNSP or the DPMA. It may also simply be that there is no consolidated data on the exact number of "procès-verbaux" established for maritime fisheries infringements. This also raises the issue of the reliability of the data used by the French competent authorities to establish their performance indicators regarding their fisheries control policy. In the end, it questions the efficiency of the databases used by officials to report on their inspection activities and follow-up actions.

## 2.3 Sanctions

As mentioned above, the establishment of a "procès-verbal" does not necessarily mean that there will be, in the end, a sanction. The administrative and judicial competent authorities can decide to drop the case or, in the case of criminal proceedings, to propose alternative measures. Therefore, it is important to not confuse the number of "procès-verbaux" reported with the number of sanctions actually imposed.

### 2.3.1 Administrative sanctions

There is no consolidated and publically available data on the number and level of administrative sanctions for maritime fisheries infringements. We contacted the French competent authorities (the "DPMA") in order to obtain data on the number and level of administrative sanctions issued each year in France, but they indicated that they did not want to communicate that information.

However, there is anecdotal evidence in French newspapers regarding the nature and level of administrative sanctions, for example:

- Fines between 150 and 400 Euros for inshore fisheries infringements in the north of France were reported in 2013, following the establishment of 19 "procès-verbaux";<sup>61</sup>
- Fines between 50 and 100 Euros for recreational fishers illegally catching clams were reported in a newspaper;<sup>62</sup>
- A 1,000 Euros fine and a one month suspension of an authorisation to fish were brought by an administrative court in 2015 against a shipowner for fishing for scallops in a prohibited area over at least 3 days.<sup>63</sup>

There is no public information regarding the actual implementation of the penalty point system in cases of serious infringements, although the DPMA indicated to us that they have started to

<sup>61</sup> See: <http://www.lepharedunkerquois.fr/a-la-une/des-amendes-de-150-a-400-euros-distribuees-en-2013-ia676b0n123533>.

<sup>62</sup> See: <http://www.ouest-france.fr/les-pecheurs-la-palourde-ont-ete-controles-115462>.

<sup>63</sup> See: <http://www.libertebonhomme.fr/2015/03/31/peche-a-la-coquille-saint-jacques-en-zone-interdite-la-sanction-confirmer-par-la-cour-administrative-d-appel/>.

assign penalty points. In 2017, the European Court of Auditors published a report on EU fisheries controls, in which it noted that: *"In France, the EU penalty point system was not applied. There was a lack of clear national rules and procedures on responsibility for sanctions and points. The Commission has established an action plan with France to address the shortcomings relating to the organisation and implementation of inspections and sanctions"*.<sup>64</sup>

### 2.3.2 Criminal sanctions

For criminal sanctions, some data is published by the Ministry of Justice through the "Observatoire National de la Délinquance et des Réponses Pénales".<sup>65</sup> As mentioned above, these numbers must be considered with caution, as there is no clear indication of the exact scope of this analysis. However, it nevertheless gives some trends.

Of the 2,382 presumed perpetrators of infringements identified by the French public prosecutors in relation to maritime fisheries:

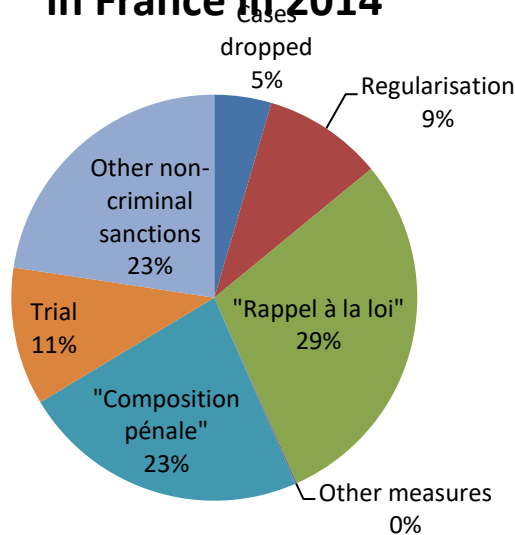
- 4.3% of these cases were dropped, either because the situation was regularised, or there was not enough evidence of the infringement, or the disturbance caused was determined to be minimal;
- 58.2% of these cases were subject to an alternative sanction than criminal proceedings: either regularisation (which, in the case of fisheries, will most likely mean that the prosecutor asks to the perpetrator of the infringement for a commitment to respect the rules in the future), a reminder of what the law is ("Rappel à la loi", 27.7% of all the cases) or the adoption of other non-criminal sanctions (21.4% of all the cases);
- 27.1% of all the cases were subject to a procedure called "composition pénale". Through this procedure, the author of the infringement recognises that he is guilty, and the public prosecutor then proposes a sanction, such as a fine, that the defendant has to accept in order to close the case. This procedure can concern all types of fisheries infringements;
- 10.4% of all the cases were tried in front of a court.

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<sup>64</sup> European Court of Auditors (2017), Special Report No 08/2017, *EU fisheries controls: more efforts needed*, p. 50.

<sup>65</sup> See: [http://www.justice.gouv.fr/art\\_pix/infostat\\_138\\_20151209.pdf](http://www.justice.gouv.fr/art_pix/infostat_138_20151209.pdf). The numbers contained in this paper are taken from statistics of the "Observatoire National de la Délinquance et des Réponses Pénales".

## Judicial treatment of fisheries infringements in France in 2014



In total, out-of-court settlements represented 89.1% of criminal cases related to maritime fisheries infringements in 2014. The procedure for these settlements is well-established under French law,<sup>66</sup> with the aim to have a faster criminal response and not to congest the courts with cases that the French legislator considers as being minor infringements. In the 2015 report of the Ministry of Justice, it is also mentioned that out-of-court settlements are used in a so-called "gradation of the criminal response": first, administrative sanctions are used, then out-of-court settlements, and ultimately, if necessary, criminal court cases.

Finally, the report provides some data on the court cases themselves. 279 cases were tried in front of a court in 2014 (it is not said if these cases are only related to maritime fisheries or if this data also encompasses freshwater fisheries), out of which 257 led to a sentence. Of these 257 sentences, 234 were fines of an average level of 1,675 Euros. Thirteen imprisonment sentences were also pronounced. Overall, it seems that the level of sanctions is quite low.

Additionally, French newspapers report from time to time on criminal proceedings against operators found guilty of fisheries infringements. Overall, the level of sanctions reported in the press seems to be quite low:

- 800 Euros fine for a fisher found guilty of fishing in a prohibited area;<sup>67</sup>
- 5,000 Euros fine (each) for four fish wholesalers found guilty of buying over-quota cockles (even though it is common knowledge that this illegal harvesting represents several hundreds of tons of cockles and tens of thousands Euros);<sup>68</sup>
- 1,500 Euros or 3,000 Euros (for repeated infringements) against fishers found guilty of refusing an inspection of the French competent authorities on board of their fishing vessel.<sup>69</sup>

<sup>66</sup> Articles 41-1 and 41-2 of the Criminal Procedure Code.

<sup>67</sup> See: <http://www.letelegramme.fr/cotes-darmor/lannion/800-eur-d-amende-pour-peche-interdite-30-06-2016-11129155.php>.

<sup>68</sup> See: <http://www.courrier-picard.fr/region/les-mareyeurs-a-l-amende-pour-surquotas-de-coques-ia0b0n304975>.

Imprisonment sentences were given in a special case that concerned illegal fishing for bluefin tuna during the 2007 season.<sup>70</sup> The judgment was delivered seven years after the infringements took place and the sentences ranged from 8 to 24 months of prison. However, these sentences were all suspended. They were accompanied by fines from 15,000 to 50,000 Euros and by confiscations of goods ranging in value from 15,000 to 100,000 Euros. This was before the introduction in 2014 of provisions in the Rural and Maritime Fisheries Code that now prohibits imprisonment sentences for fisheries infringements committed outside the territorial sea.<sup>71</sup> In 2016, an eight month imprisonment sentence was pronounced against the Brazilian master of a fishing vessel caught fishing illegally within the territorial sea in French Guiana.<sup>72</sup>

French courts have been more severe with foreign fishing vessels caught operating illegally in French waters:

- A 595,000 Euros fine was reported for the operator of a German trawler caught fishing illegally. The value of the fish caught illegally was 1.2 million Euros, amounting to 1,585 tons. The fishing vessel was seized and detained for several days in a French port;<sup>73</sup>
- Fines of 5,000 to 20,000 Euros were reported for UK vessels illegally fishing scallops in the Channel;<sup>74</sup>
- A fine of 10,500 Euros was reportedly given to the master of a Dutch trawler for an infringement to fishing gears regulations in French waters.<sup>75</sup>

## 2.4 Development of a culture of compliance

The development of a culture of compliance is one of the objectives of the Control Regulation, but what is happening on the ground tells a completely different story.

In 2012, the French Court of Auditors highlighted that the fishing sector was too often putting pressure on the competent authorities for fisheries control related issues.<sup>76</sup> It expressly mentioned a case where controls were interrupted following recriminations by ship owners. This statement was later contested by the French competent authorities,<sup>77</sup> but gives an idea of the atmosphere surrounding fishery control issues in France.

Newspapers have also reported cases where fishers have refused to be controlled as an act of protest against EU legislation relating to mesh and minimum catch sizes regulations. They notably argued that other EU Member States (Spain is often named), are more lenient when it comes to control and enforcement.<sup>78</sup>

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<sup>69</sup>See: <http://www.courrier-picard.fr/region/les-mareyeurs-a-l-amende-pour-surquotas-de-coques-ia0b0n304975>.

<sup>70</sup> See: <http://www.infocapagde.com/article.php?sid=4017>.

<sup>71</sup> Article L945-4-1 of the Rural and Maritime Fisheries Code.

<sup>72</sup> See: <http://www.lemarin.fr/secteurs-activites/peche/24134-peche-illegale-en-guyane-huit-mois-ferme-pour-un-capitaine-bresilien>.

<sup>73</sup>See: [http://www.lemonde.fr/planete/article/2012/12/19/le-chalutier-geant-allemand-arrete-a-cherbourg-ecope-d-une-amende-record\\_1808176\\_3244.html](http://www.lemonde.fr/planete/article/2012/12/19/le-chalutier-geant-allemand-arrete-a-cherbourg-ecope-d-une-amende-record_1808176_3244.html).

<sup>74</sup>See: <http://www.lemarin.fr/articles/detail/items/normandie-15-000-euros-damende-pour-le-coquillier-britannique-van-dijk.html>.

<sup>75</sup> See: <http://www.lemarin.fr/secteurs-activites/defense/21664-un-chalutier-neerlandais-sanctionne-dunkerque>.

<sup>76</sup> French Court of Auditors, Référé No 64384 of 12 July 2012 on the control of maritime fisheries, p. 2 and 3.

<sup>77</sup> Reply to the référé from the Court of Auditors available [here](#).

<sup>78</sup> See the articles [here](#) and [here](#).



One case was also reported where fishers went to a meeting with their local administrative authorities to protest against both criminal and administrative sanctions in case of fisheries infringements.<sup>79</sup> They underlined that, in other departments across France, fishers were subject to either an administrative or a criminal sanction, but never both at the same time. The local authorities advised them to appeal against the criminal sanction.

There was also some resistance at the time of the introduction of the penalty point system. On this occasion, the French National Committee for Maritime Fisheries and Fish Farming published a guidance document in which it questioned the legality of the system when it foresees that, in the case of sale, points attributed to a fishing vessel are transferred to the new owner.<sup>80</sup> It also pointed out that, before the introduction of the penalty point system, it was already possible, under French laws, to suspend or withdraw fishing licences in case of infringements (and this is indeed the case, but whether this measure was ever actually applied is not verifiable).

It should also be pointed out that, at EU level, gaps were identified in the French control system by the European Commission, and this led to the establishment of a French control action plan in 2014.<sup>81</sup> The focus of this plan is on the catch registration system, *"in order to ensure that the data available to national controllers is complete, reliable and timely"*.<sup>82</sup> If there is no action, or insufficient action, taken by France under this plan, then the Commission could start infringement proceedings (again). An impact of this plan can be seen in the 2016/2017 national control plan,<sup>83</sup> where the respect of reporting obligations was identified as being the priority objective for the control authorities.

Finally, in addition to the specific issue of the implementation of the enforcement title of the Control Regulation, it was reported to us during the preparation of that study that the software which supports the electronic logbook in France was not updated between at least 2013 and the beginning of 2017. As a result, the French e-logbook did not include any of the specific boxes needed to report on the implementation of the landing obligation, which started being introduced in 2014. This means that the French competent authorities were relying on less efficient data provided on paper by fishers, and therefore had little evidence at their disposal to monitor the effective implementation of that obligation.

### 3 Discussion and recommendations

Under this section we identify specific findings and recommendations for the French control and enforcement system. General lessons learnt and EU-level recommendations are included in a separate paper,<sup>84</sup> which accompanies our six case studies (France, Ireland, England, the Netherlands, Poland and Spain).

#### 3.1 Increase controls at sea and improve controls on landings

Our research shows that, except for French Guiana where the authorities have rather ambitious targets to tackle foreign IUU fishing in the French EEZ, control and enforcement is not a priority

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<sup>79</sup> See [here](#).

<sup>80</sup> The guide is available [here](#).

<sup>81</sup> Memo from the European Commission: [Questions and answers on new French control action plan](#), 6 June 2014.

<sup>82</sup> *Ibid.*

<sup>83</sup> [Note technique du 30 mai 2016 relative au plan national de contrôle des produits de la pêche maritime et de l'aquaculture marine bisannuel 2016-2017](#)

<sup>84</sup> Include link to paper once available.



for the competent authorities in France. The European Court of Auditors noted recently that *"In France and Spain the inspection priorities were not determined by the authority providing the resources. In France, there was sometimes a discrepancy between the tasks assigned and the resources allocated, so consequently the control teams could not cover all the targeted landings and the number of inspections had fallen in recent years"*.<sup>85</sup> The reasons explaining this decrease are not always clear and cannot solely be attributed to the implementation of risk analysis in the conduct of inspections. In 2016, the higher priority given to security issues over fisheries controls was the explanation provided by the CNSP to the 5.1% drop in the number of inspections.<sup>86</sup> In its 2015 annual report, this authority stated that fewer inspections took place that year because of the need to redirect some resources to fight terrorism. In 2014, there was already a drop in number of inspections, which was explained in the annual report by a change in the regulations on control upon landings for bluefin tuna. So within four years, the number of inspections reported by the CNSP in metropolitan France fell from 6,019 to 4,531, a total decrease of 24.7%. Budgetary cuts are also likely to have an important impact on the number and quality of inspections.

It will be important in the years to come, particularly in light of the implementation of the landing obligation, to maintain a high level of controls at sea. Although this is more costly and involves more human and technical means than controls on land or throughout the supply chain, this appears to be more efficient at detecting infringements. For example, the infringement rate for inspections at sea in France was 18% in 2014 according to the CNSP<sup>87</sup> whereas the rate for inspections upon landings was 8.4%.<sup>88</sup> In 2014, the infringement rate reported for the supply chain was even lower; 1.5%, according to the above-mentioned budgetary reports.

It is also important to interpret these numbers in light of another reality: controls at sea may be more efficient to detect infringements because they are more comprehensive. They seem to be more accepted by fishers than controls upon landing, where inspectors have to rush to complete their tasks in order to let the fish enter the supply chain still fresh. After the landing takes place, it is also more difficult to assess if the rules were violated or not. Anecdotal evidence gathered through interviews with stakeholders also suggests that France has still not fully implemented its obligations related to control upon landing. Despite budgetary restrictions, focus on controls at sea should increase and, at the same time, the quality of controls upon landing should be enhanced.

It is also unclear from this research whether the national charter for the control of fisheries still applies. If it does, then the 30 days time period which has to be respected by control authorities before being authorised to re-inspect a fishing vessel is a serious cause for concern. Even if, as indicated by the Ministry in charge of fisheries, the time-period of 30 days can be interrupted, for example in cases where there is reliable and consistent evidence that an infringement has been committed or when there is a need to reach the control objectives determined by the EU legislation, this provision sends a wrong signal to the entire sector.<sup>89</sup> As reasonably suggested by the French Court of Auditors in its 2012 report,<sup>90</sup> this time-period should be eliminated and a simple reference in the Charter should be kept, pointing out the need to avoid redundant controls when they are not necessary.

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<sup>85</sup> European Court of Auditors (2017), *Special Report No 08/2017, EU fisheries controls: more efforts needed*, §76.

<sup>86</sup> See Bilan d'activité CROSSA Etel 2016, p. 24.

<sup>87</sup> And 21,75% according to the budgetary reports.

<sup>88</sup> 4,4% according to the budgetary reports.

<sup>89</sup> Reply to the 2012 "référé" from the Court of Auditors available [here](#).

<sup>90</sup> French Court of Auditors, Référé No 64384 of 12 July 2012 on the control of maritime fisheries.

### 3.2 Reintroduce the possibility of applying both fines and imprisonment

As discussed above,<sup>91</sup> Article L945-4-1 of the Rural and Maritime Fisheries Code, which states that *only* fines could be applied in cases of infringements committed beyond the limits of the French territorial sea, should be modified or repealed. This provision was based on a misinterpretation of Article 73.3 of UNCLOS.

Imprisonment sentences are rarely pronounced in cases of fisheries infringements, but they are certainly needed when very severe infringements are detected. They also have a dissuasive effect on potential offenders and, as such, are in line with flag State international obligations outlined in the ITLOS Advisory Opinion on IUU fishing.<sup>92</sup>

### 3.3 Simplify fisheries control and enforcement procedures and increase the coordination of competent authorities in France

In France, authorities with the competence to adopt fisheries control regulation are found at the national, regional and local levels. These authorities report to different ministries and can have diverging or competing interests. This situation has an impact on the way controls are conducted and on the enforcement strategy of these authorities. During interviews with stakeholders, it was suggested, for example, that almost all the infringements which receive a judicial treatment come from the Gendarmerie Maritime, whereas the Maritime Affairs seem more reluctant to bring a case against offenders. It has also been suggested that controls were more comprehensive in some parts of the French territory than in others. This situation has also been evidenced by the European Court of Auditors, which stated that *"In France, the coordination between national, regional and local level were undermined by the complexity of the administrative organisation"*.<sup>93</sup>

In addition, there is no clear guidance on the synergies between administrative and criminal sanctions. Concretely, the public prosecutor and the administrative authorities decide on a case-by-case basis if they will initiate criminal proceedings against an offender, leading to situations where. Because this will depend on the location of the operators on the French territory, there is a continued lack of a level-playing field.

Creating a level-playing field is a crucial condition to ensure the development of a culture of compliance. It is crucial amongst Member States, but also within them. In order to reach this objective, it will be important for France to:

- ensure better coordination between all competent authorities;
- make sure that controls respect the same standards;
- provide guidance on how administrative and criminal sanctions should be used. There is a clear divergence in regions, with some authorities considering that administrative and criminal sanctions can be used on an escalating scale (administrative first, then criminal) and some considering that these sanctions can be used in combination.

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<sup>91</sup> See section 3.2.3 of the report.

<sup>92</sup> International Tribunal for the Law of the Sea, Case No 21, Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC).

<sup>93</sup> European Court of Auditors (2017), Special Report No 08/2017, *EU fisheries controls: more efforts needed*, §75.

### 3.4 Adjust the level of sanctions so they will be a real deterrent

Article 89(2) of the Control Regulation requires that *"the overall level of sanctions and accompanying sanctions shall be calculated, in accordance with the relevant provisions of national law, in such way as to make sure that they effectively deprive those responsible of the economic benefit derived from their infringement without prejudice to the legitimate right to exercise their profession. Those sanctions shall also be capable of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind"*.

In the absence of consolidated and publically available data on the implementation and level of administrative sanctions, it is difficult to assess if they are effectively set at a level that is a sufficient deterrent. However, the evidence gathered suggests that the level of sanctions is generally low.<sup>94</sup> We also lack information on whether the point system for serious infringements is being properly implemented and whether it has resulted in any instances of the suspension or withdrawal of fishing licences. The above-mentioned report of the European Court of Auditors indicates that the penalty point system is not implemented at the moment.<sup>95</sup>

There is more data and evidence available for criminal sanctions. Almost 90% of criminal cases led to out-of-court settlements, for which the level of sanctions is unknown. For the remaining 10%, data from 2014 shows that the average level of fines was 1,675 Euros, and that thirteen imprisonment sentences were administered. This is extremely low and therefore worrying: usually, cases which go in front of a tribunal are the most severe ones, so we can assume that for out-of-court settlements and administrative sanctions, the level of fines is even lower.

Sanctions for serious infringements are regulated in Article 90 of the Control Regulation and Article 44 of the IUU Regulation. These articles only deal with administrative sanctions and mention that *"Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions"*. Serious infringements are defined in the non-legislative part of the Rural and Maritime Fisheries Code, which establishes a close link between this definition and the implementation of the penalty point system. In the legislative part of the Code, the requirements of Article 44 of the IUU Regulation on sanctions for serious infringements were taken into account for administrative sanctions. Articles L946-1 to L946-8 of the Code on administrative sanctions do not introduce a distinction between serious infringements and other, "non-serious" infringements. So in principle, Article 44 and Article 90 requirements apply to all infringements of fisheries regulations. The legal basis is there, and what is lacking is guidance on how to apply these provisions and probably some political willingness to do so.

There is no such provision for criminal sanctions. On 21 April 2015, the Ministry of Justice published an administrative guidance document (a "circulaire") related to the criminal policy in cases of environmental damage.<sup>96</sup> This document deals with a wide range of issues, such as the coordination between administrative and judicial authorities or guidance on how to use out-of-court settlements. It is stated in that document that, because of its characteristics, the judicial treatment of maritime fisheries infringements will be dealt with in a separate "circulaire". We asked the French authorities about the timeline for the publication of this "circulaire", but no answer was given to us. Such guidance should be produced and distributed by the Ministry of

<sup>94</sup> The evidence gathered comes from the public reports from the European Parliament, newspapers articles and interviews of stakeholders. In the absence of a publically available set of data on this topic, it is indicative.

<sup>95</sup> European Court of Auditors (2017), Special Report No 08/2017, *EU fisheries controls: more efforts needed*, p. 47.

<sup>96</sup> See: [http://www.justice.gouv.fr/publication/circulaire\\_21042015\\_close.pdf](http://www.justice.gouv.fr/publication/circulaire_21042015_close.pdf).

Justice in recognition of the damage that illegal fishing can and does cause to the marine environment.

Finally, official guidance and training should be provided to the administrative and judicial competent authorities to ensure that they are applying sanctions at a sufficient level *"to make sure that they effectively deprive those responsible of the economic benefit derived from their infringement"*.<sup>97</sup>

### 3.5 Increase transparency in the availability and reliability of implementation data

This research was conducted only with information which is publically available as the French authorities did not reply to our repeated access to information request on the subject. In general, the regulations themselves, the laws and administrative texts can be easily found on the internet.

It is more difficult to find information related to the implementation of these requirements. The fact that a law or a decree has been published does not mean that it is implemented in practice, as shown by the lack of information on the effective implementation of the penalty point system in France.

Transparency is an important requirement in the CFP Basic Regulation, which of course applies to France, and in the Aarhus Convention on access to information, public-participation in decision-making and access to justice in environmental matters, to which France is a Contracting Party. The implementation of this requirement must not be overlooked.<sup>98</sup>

Another finding was that data were found in various official documents were inconsistent or contradictory. The CNSP, the DPMA and the Ministry of Justice report different figures on the number of controls and the number of infringements found or dealt with each year. The French Court of Auditors itself pointed out in its 2012 report the lack of consolidated data for administrative sanctions against fisheries infringements. This issue should have been solved with the establishment of a national register of infringements but, although this register was created in 2011, there is no information publically available on its existence or content. Equally, much of the focus of the current reporting is on controls at sea and on landing, and very little is known on controls and infringements throughout the supply chain.

One of the main concerns of fishers that we perceived is the lack of harmonisation of fisheries controls and sanctions, not only at the EU level, between Member States, but also within the Member States themselves. In France, the fact that regional and local authorities are in charge of control and administrative sanctions, with possible divergences in the implementation of the national requirements, can reinforce this feeling amongst the fishing community. Publishing consolidated and reliable data on fisheries controls and sanctions would help to overcome that issue. This could also help address inequalities in the treatment of infringements, by pushing competent regional and local authorities to align the level of sanctions that they are giving to fishers.

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<sup>97</sup> Article 89 (2) of the Control Regulation.

<sup>98</sup> See [Transparency in the Common Fisheries Policy](#).

In the end, this would help to achieve a level-playing field which will make fishers more likely to respect the rules. Consolidated and reliable data will also help other stakeholders, such as researchers, NGOs or scientists, to determine which policies are working and which are not. For example, if there is a high infringement rate on one particular requirement of the EU or national legislation, then lessons could be drawn from that; perhaps the rule is too complex and not understood, or perhaps this particular aspect of the policy is not accepted by fishers.

## Conclusion

25 years after the first judgment of the CJEU condemning France for failing to fulfil its obligations under the EU fisheries regulations, the situation of fisheries control in France is still cause for concerns. The number of controls is diminishing, the level of sanctions is low. An article in contradiction with UNCLOS was introduced in the French criminal law, sending to the fishing sector the wrong signal that industrial fleets operating outside the French territorial sea are subject to less stringent sanctions than those operating within the 12 nautical miles limit. The requirements of the enforcement titles of the Control and IUU Regulations are not fully complied with; the level of sanctions is not deterrent and the penalty point system is not actually being applied.

Repealing the provision of the Rural and Maritime Fisheries Code which is in contradiction with UNCLOS, issuing guidance to ensure that sanctions are set at appropriate levels, maintaining budgetary means for controls at sea and upon landing, and developing better coordination between competent authorities are all necessary to achieve the objectives and requirements of the Control and IUU Regulations. What is also needed is a shift of paradigm at the level of the authorities and of the operators: accepting that control rules need to be effectively enforced to ensure a fair treatment for fishers who respect the rules.

Finally, establishing a culture of compliance can only happen if operators and authorities know what the rules are that need to be respected. During our research, lack of training was underlined by several stakeholders as being a major impediment to achieving this objective. Adequate training to better inform fishers and other operators about applicable laws and regulations, as well as training to ensure the appropriate dissemination of knowledge among inspectors, would both be extremely valuable steps towards a proper implementation of the EU fisheries control obligations.

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