

## **Article 113: The case for urgent reform of the get-out transparency clause of the EU Fisheries Control Regulation**

**Access Info is concerned by a clause in the EU Fisheries Control Regulation<sup>i</sup> which expressly prohibits the European Commission from sharing essential information about oversight and legality of fishing operations with members of the public, including with their elected representatives, the Members of the European Parliament.**

The problematic Article 113 of the current Fisheries Control Regulation states that data such as reports of sanctions for illegal fishing:

**“shall not be transmitted** to persons other than those in Member States or Community institutions whose functions require them to have such access unless the Member States transmitting the data give their express consent.”<sup>ii</sup> (*emphasis added*)

This presumption of secrecy reverses the paradigm in the EU Treaties that the Union shall work “as openly as possible”, with only limited exceptions which must be set down in law (Article 15 TFEU), and goes against the EU Charter of Fundamental Rights. Limiting access to all but those with direct oversight functions drastically reduces institutional and public scrutiny.

Article 113 dates back to the 1993 Fisheries Control Regulation, long before the right of access to documents, and has never been revised in the light of modern transparency and openness principles.

Article 113 also violates the Aarhus Convention on access to environmental information<sup>iii</sup> and EU Regulation 1049/2001 on access to documents<sup>iv</sup>, which establishes that “documents should be made directly accessible to the greatest possible extent”.

The only way to remove what is in effect a blanket ban on the public obtaining information about oversight of fishing, is to amend Article 113. This is why Access Info and many other civil society organisations are calling on the Council of Minister and the European Commission to follow the lead of the European Parliament and support the amendments proposed on 10 March 2021 during trilogue discussions.

If this is not done, civil society, environmental groups, investigative journalists, and the European citizens will be kept in the dark with no way of knowing if fishing in European Union waters is being done in a legal and sustainable way, or not.

**Reform of Article 113 to increase transparency** will ensure that MEPs, environmental groups, investigative journalists, and European citizens can be informed, and can be assured that fishing in EU waters is legal, and upholds the sustainability of marine resources, the livelihood of local communities, and food security.

## **The General Court and Article 113: The law is the law!**

Article 113 has been tested before the General Court of the EU, after Greenpeace submitted two access to documents requests to the Commission about allegedly irregular shipment of live Bluefin tuna from Tunisia to a fish farm located in Malta.

The Court found that the Commission's decision to grant Greenpeace access to documents originating from the Maltese authorities without their prior consent breached Article 113. Given the way Article 113 is redacted, the Court had no choice but to reject the idea that Regulation 1049/2001 could take precedence in this case.

In effect, Article 113 removes fishing from the scope of the EU's rules on the fundamental right of access to documents.

Access Info is not aware of another Regulation that violates the right to EU documents in this way, and is calling for urgent reform to rectify this situation.

## **An important chance to reform Article 113**

Following a letter sent to all MEPs by Access Info and 70+ European and international organisations, a majority of 400 MEPs voted on 10 March 2021 for crucial amendments to be introduced to the Fisheries Regulation, including new language by which data collected as part of the oversight of fishing can be transmitted to others and reused, unless Member States provide reasoned refusals.

In July 2021, after the EU AGRIFISH Council proposed on 28 June 2021 to further weaken the fisheries control system and introduced nothing new on transparency, the Members of the European Parliament, representatives from EU Member States, and the European Commission began interinstitutional negotiations to finalise the future Control Regulation. These trilogue discussions on the [amendments proposed by the European Parliament](#) are expected to conclude in spring 2022.

---

<sup>i</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>ii</sup> Article 113(2) and 113(3) of 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>iii</sup> Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

<sup>iv</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council on public access to EU institution documents.