



for a living planet

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**Subject: Article 95 of the Council Regulation of the fisheries control system COM (2008) 721–
Suspension and reduction of Community financial assistance**

You are considering Article 95, which provides for the suspension and reduction of Community financial assistance as a last resort for Member States that do not comply with the control and enforcement rules.

The control Regulation is a necessary complement to the Regulation on illegal, unregulated and unreported (IUU) fishing¹, adopted in 2008. However, WWF is concerned that some Member States want to remove this essential tool of the control system, Article 95, although this type of financial measure already exists in the Common Agriculture Policy². WWF considers that it is disingenuous for Member States to raise this matter at such a late stage in the procedure.

Respect the principle of conditionality: Currently, the fishery sector is the only sector covered by Community law in which funds are still distributed to Member States with perfect impunity, without being conditioned upon compliance with control rules. European Fisheries Fund and the Common Agriculture Policy³ condition financial aid upon compliance with the Community rules, and Article 95 follows the same spirit: setting down countermeasures in suspending and reducing financial aid in cases in which Member States continue to show no intention of stopping persistent and serious infringements. In the perspective of implementing an efficient control system, it is common sense that the allocation of funds should be conditioned upon following the rules.

European Parliament legal advice⁴ endorsing Article 95: On 24th of February, the legal services of the European Parliament delivered a legal opinion which endorses the competence of the Commission in suspending and cutting financial assistance. The legal services based their decision on the following arguments: Financial assistance is bound with obligations for Member States to respect the control system; legislative rules already exist where the financial assistance is conditional⁵; Finally, Article 95 does not impede the principle of proportionality and defense rights of Member States.

¹ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

² Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy Article 17 and 27

³ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy Article 17 and 27, and Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund, Article 89 and 97

⁴ Parlement Européen, Service juridique, SJ-0106/09, Sanctions et suspension/annulation des aides financières prévues dans la proposition de règlement du Conseil instituant un régime communautaire de contrôle afin d'assurer le respect des règles de la politique commune de la pêche (COM (2008) 721 du 14. 11. 2008), Luxembourg, 24 février 2009.

⁵ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy, Article 17 and 27

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Procedure only used as a last resort: The Commission will have recourse to Article 95 as a last resort, only once the Member State concerned has shown no intention to take adequate steps to remedy the serious infringements. The eventual suspension and reduction of financial aid intervenes only after Member State has failed to stop the situation following-up the inspection and audit reports, then an administrative inquiry is required and finally fails to take the necessary measures to implement this action plan. These first steps of procedure can last months, even years before seeing a decision from the Commission to use Article 95.

Article 228 is not an appropriate procedure for stopping persistent and serious infringements under the control system: It will not be reasonable for Member States to rely on the Court of Justice to tackle serious infringements regarding control under Article 228 of EC Treaty, considering the emergency need to take on IUU and others breaches which threaten marine resources in an appropriate time. It took over 24 years for the Court of Justice to order France⁶ to pay penalties because of failing to carry out controls of fishing activities in accordance with the requirements laid down by the Community provisions, and by failing to ensure that action is taken in respect of infringements of the rules governing fishing activities in accordance with such requirement.

WWF urges Member States not to modify Article 95 providing a suspension and reduction of Community financial assistance as last resort in case Member States continue not to comply with Fishery Community rules.

⁶ European Court of Justice, Judgment of the Court (Grand Chamber) C-556/07, Commission v. France, (OJ) OJ C 102 of 01.05.2009, p.8