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Europêche comments on the European Commission proposal¹ for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008

Background

The European Commission (EC) has recently proposed a new Regulation on Fishing Authorisation Rights (FAR) as part of the REFIT programme. While the purpose of this proposal is to align the text with the Lisbon Treaty as well as the Control and IUU Regulations; it also aims to modernise, harmonise and simplify the current system. In this sense, the responsibilities of the EU, Member States (MS) and operators will be properly defined avoiding duplication of effort and resources. The proposal has also extended the scope of applicability in order to guarantee a comprehensive legal framework regulating the EU's long distance fleet activities.

Europêche agrees with the EC that the general objective of the proposal must be to improve transparency and governance in both EU and non-EU waters in order to ensure the sustainable exploitation of the stocks and the fight against illegal fishing practices. However the proposal introduces new provisions whose effects and consequences for the EU fishing industry need to be analysed in detail. On the contrary, we see that this will not affect the fleets of foreign flags, which would be interesting if they fulfill these conditions when they export fish to the EU.

General Remarks

The whole wording of the proposal is written from a negative perspective giving the impression that so far EU operators have not been complying with the rules and that international agreements have created a 'free for all'. On the contrary, the text should acknowledge that the EU fleet is the best monitored and controlled in the world as well as highlighting the beneficial effects brought about by international agreements for the EU fishing industry, local markets and third country communities. Moreover, we must not forget the important role played by the long distance fleet in providing food security, since they catch around 21% of the EU's total catch for human consumption.

We fully agree with the EC when it states in its proposal that the new provisions must be limited to what is necessary to strike the balance between more effective control measures and simplification of the issuing process². However, the EC has not stuck to these objectives and instead has proposed excessively bureaucratic measures that entail a heavy burden for the fishing sector and administrations. This will certainly hamper fishing operations and endanger the future signature and implementation of fishing agreements. We have repeatedly stated that any new measure should be subject to an impact assessment and in case of a possible negative socio-economic effect, there must be a budgetary provision to mitigate the eventual negative repercussions. In addition, in its Roadmap it is shocking that the EC states that EU fishing operators *could* be indirectly affected by the proposal, mainly in a positive sense (while it is completely the opposite).

¹ COM(2015) 636 final

² In line with the EU Better Regulation package and new CFP

At the same time, in this proposal, the EC is aiming at strengthening the current legal framework. However, the new text is based on mistrust, establishing the presumption of the illegality of fishing operations as a rule. In addition, we see an excessive allocation of powers to the EC to revise MS and industry activities and an overuse of delegated acts. We believe that the issuing of fishing licenses and control should be a member State competence, cross-checked by the EC, without interfering in or duplicating the process. There is no need for the operator to provide the very same information to different authorities (EU, MS and 3rd countries). Therefore, more consistency and a clear division of competences are needed in this respect to avoid any possible conflict between them. In addition, the EC does not have enough human resources nor the means to carry out these checks without jeopardizing the normal running of businesses. Indeed, we know for a fact that EU will not have the capacity to validate all the licenses in time (already validated by MS), since our operators are already experiencing huge delays in the issuing of fishing licenses which caused losses of several fishing days consequential economic loss and damages. Even more worrying, year after year we are experiencing delays just to be able to renew the licenses for the same vessel, period and conditions under the same Protocol. Furthermore, if the EC intends to assume further competences, we would call for a cost-benefit study of the entire system and sufficiently long transitional trial period in order to test that this new system is feasible in practice.

For this purpose, Européche calls for a *“fast-track renewal process”* for all kinds of fishing agreements. It does not make sense that the operator has to provide the same information year after year for example in the framework of a 5 year Protocol (see comment on Art. 39). In case all terms and conditions remain the same under a given Agreement, the operator should be eligible to automatically renew the fishing license provided there is no change in the documentation already delivered. We must not forget that once the operator has transferred the license fee to the 3rd country, the license is granted and the fishing period starts. Therefore, any check must be done before that period so that it never makes the exercise of fishing operations conditional when the operator already has a valid license from the third country.

Europêche advocates the establishment of minimum standards enforced by MS and cross-checked by the EC. This would create a legislative harmonisation and further enhance transparency and reporting of fishing activities. However, this text goes in the wrong direction since it creates new competitive disadvantages for our fleets while having little impact in the management of third country fleets. We need an international level playing field to compete with other big fishing nations such as China, Russia, Taiwan and not a ‘good example policy’. We should not repeat the same mistakes of the past where our attempts to export our policy to RFMOs failed (for example, the shark finning ban).

Finally, we are of the view that the regulation must ensure the long-term conservation and sustainable use of resources. Nevertheless, the entire proposal prioritises the protection of the environment with no regard for the socio-economic consequences to the detriment of the industry.

In view of the above comments, we cannot accept this proposal as it is, since it introduces unnecessary red-tape, puts our operators at an international competitive disadvantage and it is based on the premise that the EU fishing fleet is illegally operating in third countries’ and international waters. We urge the EU co-legislators to pay close attention to the comments stated below so that the EU operators can continue fishing and the EU does not end up importing all seafood from 3rd countries whose standards on quality, sustainability and environmental protection are quite lower than in the EU.

Specific Remarks

Article 1) - Subject matter

Europêche believes that Northern Fisheries Agreements should be excluded from the scope of this Regulation, since they follow a different issuing process.

Article 5 - Eligibility criteria

1.a) Regarding the “*support vessels*”, it is impossible to know the details of these boats prior to the fisheries operations. It must be taken into consideration that fishing seasons could last an entire year.

1.c) Europêche welcomes this article. We encourage all EU fishing vessels to apply for an IMO identification number and call on all countries that are part of the different RFMOs to make this number mandatory for their fleets. This decision will allow stepping up the fight against illegal fishing, improving transparency, providing greater protection to law-abiding fishermen and preventing unfair competition in the sector.

1.d) The scope of this paragraph must be limited to the individual fishing vessel, removing “*the operator*” from the text. As stated in EC Staff Working Document (SWD(2015)276 final³), the ship-owners of the fishing vessels affected, usually own a fleet made up of several entities. Therefore, this rule would be discriminatory against these large fishing operators.

Furthermore, the proposal states that fishing authorisations can only be issued to a vessel provided that the vessel has not been subject to a sanction during the 12 months prior to the application for said authorisation. We agree that those who have broken the law should pay a dissuasive fine depending on the gravity of the infringement and/or its repetition. However, this paragraph introduces a double sanction system (economic fine plus no eligibility to apply for a fishing license) not existing in the current control Regulation. Once the sanction has been fulfilled and any possible fines have been paid, there should be no impediment to the granting of fishing authorization. We must not forget that the majority of the offences are control-related, not IUU.

In addition, a fishing operator can always appeal against a sanction until there is a final ruling. Therefore, a Member State can never deny or remove a fishing license from a fishing operator until this ruling has been made by an enforcement body.

In this way, the principle of proportionality introduced by the point system for serious infringements⁴ is not recognised in this Regulation which creates double-standards for similar offences. In this sense, it is possible to impede fishing activities to a vessel operating outside EU waters even if his license has not be suspended, while a ship which has committed serious offenses, but operating in EU waters, may continue fishing even if his license is suspended. We prefer that the whole system of sanctions stays out of this Regulation since the penalty mechanism resides with the Law of the member states.

Article 6 - Reflagging operations

This article is a perfect example of mistrust towards the industry, establishing the presumption of the illegality of these operations and creating more red tape for operators.

³ EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposal for a Regulation on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008

⁴ See Article 92 of Regulation 1224/2009

2.b) In order to ensure transparency and legal certainty⁵, this article should only apply when the third country is finally recognized as non-cooperating by the Council. Therefore, the article should only be applicable when the state is included in the list of non-cooperating third countries in the Official Journal of the European Union (see Article 35 of Regulation 1005/2008). The EU fishing operators can only be punished for dealing with countries listed by the Council as non-cooperating after they have defaulted on the opportunity to rectify their actions given to them by the Commission. The yellow card aims at encouraging the improvement of fisheries management in a given 3rd country. If the EU operator abandons the country once the yellow card is issued, there is no incentive for the country to improve the situation. In addition, the fishing license will not just be invalid in the country listed as non-cooperating, but it will be invalid everywhere.

3. In this paragraph, the proposal lays down an “open list” of possible information that may be required by the flag MS concerned. However, the EC should have established a “closed list” in order to ensure legal certainty to the operator.

3.d) In order to ensure consistency with article 5.1.d, it should read: *“an official statement by the third country where the vessel was reflagged listing the sanctions, if any, the vessel ~~or the operator~~ had been subject to during the relevant period.”*

4. Same rationale of article 6.2.b) applies

5. We must not forget that fishing is a business activity which often implies heavy economic and employment investments, particularly concerning the long-distance fleet. Therefore, paragraph 5 should allow for a third exception c) which should say *“Once a country is listed in the EU Official Journal as an IUU non-cooperating country, the operator should be granted the opportunity to finish the fishing activities for the season concerned on the condition that he provides the information referred to in paragraph 3”*. An EU operator who is fishing sustainably should not pay the consequences derived from the behaviour of a 3rd country.

Article 7 - Monitoring fishing authorisations

5. The first and most obvious point to make here is the excessive allocation of powers to the EC to monitor and revise MS and industry activities. It was unanimously accepted during the negotiations of the current CFP that micro-management was one of the biggest failures of the former legislative framework. However, the EC, due to a general mistrust of MS and operators, proposes the monitoring of all fishing authorisations, repeating the same mistakes of the past. The EC disregards the steps taken by the EU fleet to promote responsible and sustainable fishing practices worldwide to ensure a healthy and diverse marine environment. Furthermore, MS have successfully been controlling their own fleets over the past few years and approving stringent legislation⁶. This article may clash with their exclusive competences⁷.

In addition, the scope of this paragraph is not clear since the terms used are extremely vague and open to interpretation. For example, *'sustainable exploitation, management and conservation of marine biological resources'*. As a consequence, there will not be any legal certainty for the both MS and operators.

Moreover, as established in the CFP *“the Union should cooperate with third countries and international organisations for the purpose of improving compliance with international measures,*

⁵ It does not exist a public list of criteria used by the EC to pre-identify a country as non-cooperating

⁶ Spanish Law 33/2014 of 26th December on Maritime Fisheries.

⁷ See UNCLOS - PART VII - HIGH SEAS. Particularly Article94 - Duties of the flag State

including combating IUU". However, with Article 7 the EC is trying to use EU's exclusive competence on fisheries to impose unclear environmental standards outside EU waters. **When/where does marine conservation end and sustainable exploitation start?**

Article 8 - RFMO Membership

There are third countries with which the EU has signed an SFPAs that are not a contracting party or non-contracting cooperating party to a RFMO, such as the Republic of Guinea-Bissau. This country has not been identified as non-cooperative country against IUU or as a country that does not cooperate for sustainable fisheries. The EU should not pressure sovereign countries on their decisions to participate in an international forum.

Furthermore, these type of constraints imposed on the European fleet are eliminating equal opportunities, distort competition and hinder the European fishing industry over its competitors.

Article - 10 Fishing authorizations

In most MS, fishing licenses to operate in third country waters are only extended by these countries. We fail to understand why the flag State has to issue a duplicate or extra-license in this case, particularly in the case of fishing licenses under SFPAs in which the whole process is done just through DG MARE and Member States services. They fully guarantee the legality of the licenses without any additional administrative action/cost. Therefore the issuing of fishing licenses by the flag State linked to the issuing of fishing licenses from third countries is excessive and can only lead to trouble and red-tape.

In order to avoid this duplication, the new EU register (established in Art. 39) should contain all the necessary operators' application documents for the fishing license. That way the documents will be in one place, available to these authorities and can be viewed at any given time. As a consequence, there will be a unique license process which ensures no delays and the operator would only have to deliver the documents one time.

Article 11 - Conditions for fishing authorisations by the flag Member State

c) Concerning the financial penalties, we have to bear in mind that the fines may be imposed by third countries' governments with differing legal systems. In addition, as stated before those penalties can be challenged or appealed, which will put a lot of pressure on shipowners in case they want to apply for a new authorisation. EU legislation should not put EU operators at a disadvantage, namely when it cannot guarantee the fulfilment and compliance of the provisions agreed in the SFPAs by the third party (for instance, the recent lack of compliance by Mauritania with the Protocol's manning requirements). In this context, the reference to financial penalties must be removed from the text. A second option that would bring a certain level of protection and legal certainty would be the following wording: "*(c) the operator has paid all fees and financial penalties claimed by the third country, following a final court decision and without appeal*".

Article 12 - Management of fishing authorisations

4. The compliance with the conditions laid down in article 11 is checked by the flag Member State. Therefore, the EC must not duplicate the process in order to avoid delays.

5. The EC has removed certain words from the original text of the current Regulation, making the measures less stringent for the EC. Therefore, the wording of article 8.3⁸ of the current regulation N^o 1006/2008 should be maintained.

Article 13 - Reallocation of unused fishing opportunities in the framework of sustainable fisheries partnership agreements

It is not clear if the Northern Fisheries Agreements (regulated in section VI of the Title II of the regulation 1380/2013) would be concerned or not by this article. Whatever the scope of this future regulation will be, they must not be concerned by this article.

1. Further clarification is needed on the Member States “*benefiting*” from the corresponding shares. The reference to “any other relevant period of implementation” should be limited to a maximum of one year. Nevertheless, we believe that the EC has too much leeway on how to redistribute unused fishing opportunities and that this article would hamper a system that is currently working in practice. Therefore, we recommend the simplification or deletion of this article.

2 & 4. It should be made clear if “within 10 days” is referring to working or calendar days which may be too short in some cases.

Article 14 - Reallocation methodology

The present article should lay down a closed list of criteria to temporary reallocate unused fishing opportunities for the sake of legal certainty and transparency. Furthermore, we fear that the role of MS and Advisory Councils would be seriously diminished to the sole benefit of the EC in this matter.

Article 15 - Allocation of yearly quota broken down into several successive catch limits

This article gives unnecessary power to the Commission to adopt an implementing act on the allocation of quota to the member states concerned within the year (in the framework of an existing SFPAs) in a situation where the annual entitlements of the member states in this SFPAs are already defined in a Council Regulation, as stated in paragraph 2 of this article 15.

It is better to leave it up to the member states to agree on fish plans and to exchange fishing opportunities under such Protocol among them, if necessary.

Paragraph 1 and 2 can therefore be deleted and be replaced by the following paragraph:

“The allocation of fishing opportunities in a situation where the Protocol to an SFPAs sets monthly or quarterly catch limits or other subdivisions of a yearly quota, the corresponding fishing opportunities between Member States shall be consistent with the annual fishing opportunities allocated to Member States under the relevant Council Regulation. The only way that this principle will not apply is when the Member States concerned agree on joint fish plans that take account of the monthly or quarterly catch limits or other subdivisions of a yearly quota.”

Article 17 - Direct Fishing authorisations

We reemphasise the rationale used in article 10. Fishing licenses to operate in third countries’ waters are only extended by these countries; there is no need for the flag State to issue a duplicate

⁸ If an authorising authority informs the Commission that it has decided to suspend or withdraw a fishing authorisation issued for a Community fishing vessel under an agreement, the Commission shall **immediately** inform, **by electronic transmission**, the flag Member State of that vessel. **The flag Member State shall immediately transmit that information to the owner of that vessel.**

authorisation. It must be avoided at all costs that the issuing of a license by a third country, follows a license from the EU or member state, we see no reason for anything else other than a cross-check system ex-post.

Article 18 - Conditions for fishing authorisations by the flag Member States

Europêche believes this provision to be very damaging for the industry. The EC intends to transfer its own responsibilities and duties to the operators. The article creates red tape and imposes heavy conditions on the industry which are not even required for SFPAs. As it is, the article would *de facto* impede fishing activities under direct authorisation preventing operators looking for new business opportunities in countries where the EU is not able to reach agreements. The EC needs to pursue and safe-guard the interests of the EU industry creating blue growth and new business opportunities. It also forgets the beneficial effects of these agreements to both EU industry and local markets and the third country communities.

a) Given that the issue of some dormant SFPAs with unimplemented Protocols has not been solved, the EC should explore ways to allow for direct fishing authorizations in these cases. The article should allow for the issuing of fishing authorisation, for instance if the Protocol has not been in force with the relevant third country for a number of years.

c).paragraph 1: it is not clear what would happen if the country concerned delays or does not provide any kind of written confirmation to the EU. How does the EU envisage protecting its fishing fleet? In addition, we need an exhaustive list of "terms of the intended direct authorisation" in order to guarantee legal certainty.

c).paragraph 2 (evidence of sustainability): the conditions laid down are completely unacceptable; the coastal state is a competent authority to decide on their waters and fishing opportunities. It is one thing to manage licences, but quite another to control the fishing management of a sovereign third country, which is far beyond the scope of this regulation. In addition, we fail to understand why the EC⁹ in the case of a direct authorisation, states that the flag Member State should follow the best available scientific advice and a precautionary approach when authorising its vessels. With the unrealistic burden of proof and the huge amount of data required, the precautionary approach does not make sense. Moreover, it should be noted that if EU authorities conclude that a third country's approach to fisheries is not sustainable, the appropriate procedure is that set out in Articles 31 through 33 of the Council Regulation (EC) No 1005/2008. The Commission seems to try to circumvent the procedure and place additional burdens on the fishing operators. Furthermore, in case of fishing activities targeting stocks managed by a given RMFO¹⁰, the fact that the operator complies with the rules adopted by the RMFO should suffice as proof of sustainability.

c).paragraph 3: the EU delegation in the 3rd country should be the competent authority to request the copy of the third country's fisheries legislation in order to justify the EU interest in the fishing activities carried out in third country waters.

d). these types of constraints on the European fleet eliminate equal opportunities, distort competition and hinder the European fishing industry over its competitors.

⁹ See "Detailed explanation of the specific provisions of the proposal" (page 6)

¹⁰ RFMOs produce and publish their own scientific assessments on targeted stocks

Article 19 - Management of direct authorisations

This article is based on the presumption of illegality of operations under direct authorisations, sets the basis for a return to micro-management and grants excessive powers to the EC to the detriment of MS.

2. The EC could without any justification ask for additional information within 15 calendar days. This would delay the process to obtain the authorization from a third country. In addition, it creates double standards since for RFMOs it is 10 calendar days. From a business point of view this is unsustainable. Since this period will provide the EC with enough time to carry out the checks, the withdrawal of the fishing authorisation after 15 days is simply not acceptable.

3. In addition to the former period, the EC could arbitrary delay the process for another two months (total possible delay = 2.5 months). The EC should set a closed list of reasoned justifications/causes which may be used, provided they are plausible or there are some reasoned grounds to further investigate the intended fishing operations of the third country concerned.

4. Since the contractual relationship is between the EU ship-owner and the third country in its waters, we fail to see the EC legitimacy to interfere in this respect.

Article 23 - Registration by regional fisheries management organisations

3. Both a period of time and a closed list of justifications have to be included in this paragraph for the sake of legal certainty.

Article 24 - Scope

In order to guarantee consistency and a level playing field, this article should apply to all vessels regardless of their size, even though smaller vessels do not operate in the high seas.

Article 27 - Notification to the Commission

The task of verifying compliance with the conditions is performed by the flag Member State before granting fishing authorization. Therefore, the requirement to notify the EC by the MS 15 days in advance is excessive and unjustified. It is another example of delaying fishing operations without clear reasons. This should be reduced to 10 days as is the case with RFMOs.

Article 28 - Chartering

The article is ambiguous since it covers two different legal figures with different legal effects: bareboat charter and time charter¹¹. For the sake of clarity, the applicable legislation should be the Law of the flag State of the chartered vessel. We urge the EC to include a definition of chartering arrangements.

In addition, concerning paragraph 1, clarification is needed on what are the consequences if, under the chartering agreement, the flag of the vessel changes? As for paragraph 2, we fail to understand how fisheries management is undermined by more than one charter arrangement at a time or sub-chartering and how this paragraph would help to solve the problem. Regarding paragraph 3, a State

¹¹ A **bareboat charter** is an arrangement for the chartering or hiring of a ship or boat, whereby no crew or provisions are included as part of the agreement; instead, the owner gives possession of the ship to the charterer and the charterer hires its own master and crew. In a **time charter**, the charterer charters the ship for a period of time. In these charters the charterer can direct where the ship will go but the owner of the ship retains possession of the ship through its employment of the master and crew.

is not part of the chartering arrangement, therefore the article needs to be reworded (reference should be made to the flag state of the fishing vessel owner, the charterer or the vessel). Furthermore, the article should specify if it is applicable to waters of third countries and/or high seas.

It is not clear if the article concerns chartering arrangements where a ship-owner from a 3rd country chartered the boat to an EU operator who then chartered said boat to a different country (apparently not allowed by Art. 28.2). For many EU fishing operators this would be prohibitive and might even cause their fishing operations to stop altogether; operations which are sustainable and therefore perfectly legal. Especially paragraph 2 of this article seems overreaching and there are no rational grounds for it. Moreover, this article will be particularly problematic for the pelagic industry since they target fish stocks through the waters of several countries and may have to arrange two or more chartering agreements at a time.

In this context, while the intention of the EC¹² is to set out for the first time a legal framework that helps the Union to better monitor the activities of EU chartered fishing vessels, this proposal is actually banning certain chartering operations. The EC states in mentioned recital that these operations “*may undermine the effectiveness of conservation and management measures*”, giving no reason or explanation for this statement. If that would be the case, control and monitoring measures would be needed but not a prohibition. The EC should identify where the problem lies and propose control measures, avoiding blanket bans. In addition, the EC needs to ensure that the chartered fishing vessel report all mandatory information to its Member State (as any other EU vessel); this would be the way to control this activity, not a full ban.

The EC stated that this new legal framework should be in line with relevant RFMO regulations. ICCAT, for instance, has not imposed any prohibition to chartering but instead have adopted stringent rules and conditions. Therefore, in accordance to ICCAT recommendations on vessel chartering¹³, the article should read: “*A Union chartered fishing vessels shall have a fishing license issued by the chartering nation, and shall not be on the IUU list as established by Regulation 1005/2008*”.

Article 29 - Management of fishing authorisations under a chartering arrangement

There seems to be no rational justification for the requirements set out in Article 29. From the perspective of fishing operators, chartering arrangements are just another way of organising their fishing operation and engagement of their capital. It must be emphasised that point (a) is redundant as each MS verifies the legality of charter arrangements upon entering of vessels into merchant marine registers. Point (b) on the other hand is just another example of excessive administrative burden, serving no real purpose.

Article 33 - Conditions for fishing authorisations

b) Same rationale of article 5.1.d) applies

Article 37 - Overfishing of quotas in Union waters

Europêche welcomes this new article which will ensure a sustainable management of marine resources and will create a level playing field with third countries’ vessels operating in our waters.

¹² See Recital 18 - Chartering Agreements

¹³ <http://www.iccat.int/Documents/Recs/compendiopdf-e/2013-14-e.pdf>

Article 31 - Information to third countries

3. This paragraph should read: *“When the unjustified, systematic or repeated non-transmission...”* since the article talks about serious infringements and a mere mistake cannot be considered as such.

Article 39 - Union fishing authorisation register

This article proposes to establish a Union fishing authorisation register whose aim is to record and display data related to these fishing authorisations. However, it is not clear in this article that *“fast-track renewal process”* will be settled. Moreover, according to this article, new information will have to be provided in Annex 1 and 2 for some authorisations which are not already included in the national or EU registers (cf. RFMO). This will mean that EU operators will have to provide a lot of information and the Member State will have to develop new technological systems to be able to cross-reference the sources of data, costing time and money. It is important the Commission explains how the register will operate and how it will be financed.

2. While we support the improvement of transparency and legality of fishing operations in third countries' waters, it should be noted that the operations carried out by the EU long distance fleet are highly monitored and controlled at all times. The publicly accessible information should be limited to the data proposed in this paragraph, since otherwise it may disclose confidential and sensitive data which would hamper the company's business strategy.