

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

Background

The European Commission (EC) has 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.

In view of the general approach agreed by the Agriculture and Fisheries Council on 28th June 2016 and the Draft Report from the European Parliament dated 1st August 2016, Europêche is pleased to provide hereafter some comments and amendments to improve the content of the EC proposal.

General Remarks

As already highlighted, the whole wording of the EC 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, as emphasised in MEP Engström's draft report², the text should acknowledge the beneficial effects brought about by the EU long distance fleet and international agreements for the EU fishing industry, local markets and third country communities and by the new CFP provisions. 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 have proposed 3 amendments to tackle this issue.

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 process³. 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 would certainly hamper fishing operations and endanger the future negotiations and implementation of fishing agreements.

The EC proposal 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 (who would not have to fulfill these conditions when they export fish to the EU). 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 fin-attached policy and the ban on deep sea bottom trawling).

¹ COM(2015) 636 final

² Page 29, paragraph 3

³ In line with the EU Better Regulation package and new CFP

At the same time, in this proposal, the EC is aiming to strengthen the current legal framework. However, we see an **excessive allocation of powers to the EC** and an overuse of delegated acts. Indeed, we know for a fact that the EU will not have the capacity to validate all the authorisations in time (already validated by MS), since our operators are already experiencing huge delays in the issuing of fishing authorisations which caused losses of several fishing days and consequential economic loss and damages. Even more worrying, year after year we are experiencing delays just to be able to renew the authorisation for the same vessel, period and conditions under the same Protocol.

A **better distribution of competences and improvement of global governance** can be observed in the Council's position which better responds to the establishment of minimum standards enforced by MS and cross-checked by the EC (in line with our approach). This would create a legislative harmonisation and further enhance transparency and reporting of fishing activities.

Concerning the **eligibility criteria** and in line with the Council's position, we are favourable to the deletion of Article 5, paragraph 1.d. Indeed, the 12 months exclusion for just one serious infringement as eligibility criteria is excessive given that it introduces a double-sanction system (economic fine plus no eligibility to apply for a fishing license which does exist in the current control Regulation) and grants extra-powers to 3rd countries. In addition, regarding the "support vessels", it is impossible to know the details of these boats prior to the fisheries operations, therefore the details should be delivered "where applicable". It must be taken into consideration that fishing seasons could last an entire year.

As far as **reflagging operations** are concerned, in order to ensure transparency and legal certainty⁴, this article should only apply when the third country is finally listed as non-cooperating by the Council. Therefore, as properly proposed by the Council, the reference to Article 31 of Council Regulation (EC) No 1005/2008 should be removed from the text. 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 fishing industry is concerned with Article 7, paragraph 5 on monitoring of fishing authorisations. The scope of this paragraph is not clear since the terms used are extremely vague and open to interpretation. Both the rapporteur and the Council agree with this approach. The article should exclusively refer to cases of IUU fishing since there is a clear European legal framework regulation this and for legal certainty the operator must know at all times under which legal and factual grounds an authorisation may be withdrawn. "**Cases of overriding policy reasons**" must therefore be removed from the text.

With regard to the conditions for fishing authorisations by the flag Member State, Article 11, paragraph c, the reference to "**financial penalties**" must be deleted since it unnecessarily grants extra powers to 3rd countries. We have to bear in mind that the fines may be imposed by third countries' governments with differing legal systems. EU legislation should not put EU operators at a disadvantage, namely when it cannot guarantee the fulfillment and compliance of the provisions agreed in the SFPA by the third party (for instance, the recent lack of compliance by Mauritania with the Protocol's manning requirements).

⁴ It does not exist a public list of criteria used by the EC to pre-identify a country as non-cooperating

Europêche welcomes the introduction of temporary **reallocation of unused fishing opportunities** in the framework of sustainable fisheries partnership agreements. Nevertheless, having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof, we believe that the Council of the EU must be the only competent EU Institution to reallocate these unused fishing opportunities. Therefore, we generally support Council's 1st reading position regarding articles 13-15. The sole exception would be the new "*Article 15b - Consultations with third countries in respect of Union fishing vessels*" which grants the Commission powers to amend or supplement Articles 12 to 18 of this Regulation. We believe that the procedure to change this regulation should follow the normal co-decision process.

Generally speaking the Council's position reduces the excessive red tape imposed by the European Commission proposal, particularly concerning the **direct authorisations**. However, we believe that the new Article 18.2 (as stated in the Council position) grants excessive power to the European Commission. The procedure to amend the Annex should follow co-decision.

"**Dormant agreements**" refer to countries who adopted a fisheries partnership agreement without having a protocol into force, for structural or circumstantial reasons. Given that the issue of some dormant SFPAs with unimplemented Protocols has not been solved, the EU should offer a solution to allow for direct fishing authorisations in these cases under certain conditions.

Furthermore, it should be highlighted that contrary to the European Parliament rapporteur opinion, **the EU cannot transfer its own responsibilities and duties to the operators**. Indeed, the operator must be only responsible for delivering the already existing documents that prove the sustainability of the fishery in the 3rd country waters. In other words, the burden to gather scientific advice outside RFMO governed waters cannot be placed on and at the expenses of the vessel operator. As an industry we encourage the EC to take the necessary steps to create RFMOs where the EU fishing fleets operate. The fishing industry cannot be punished for the lack of political will to create these fundamental bodies, which we fully support, to properly administrate these waters.

The EC should bear in mind that bilateral agreements (between the operator and the third country) often differ from SFPAs, therefore any reference to the **surplus stock** in bilateral agreements is not deemed appropriate. In this context, surplus stock is regulated under Title II of the CFP which refers solely to SFPAs, therefore in this Regulation (dealing with direct authorisations) the operator should not be compelled to demonstrate the existence of the surplus in the 3rd country waters. The evidence provided by the operator, highlighting the sustainability of the planned fishing activities in 3rd country waters should suffice.

The **evidence of sustainability** should be valid for a period of 3 years, in line with new article 19.3.b) introduced by the Council's position and in order to avoid conflict with scientific advice given every 2 or more years (CECAF).

Concerning the management of direct authorisations, we applaud the position from the Council which shortens the lengthy timelines proposed by the Commission. The **fast track renewal process** introduced in new Article 19.3b by the Council of the EU is also welcomed.

Europêche welcomes the Council's position on fishing activities by Union fishing vessels on the **high seas**. Nevertheless, we support the amendment of the rapporteur which extends the scope of this chapter to all vessels regardless of their size, even though smaller vessels do not operate in the high seas. This will guarantee consistency and a level playing field.

Concerning the **chartering agreements** of Union fishing vessels, the EC states in Recital 18 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 of most chartering operations. Those measures are already included in Article 29 which eliminates the possibility of the EC not being able to track the ultimate beneficiary of the arrangement or the actual ship owner.

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 by public institutions. 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. In addition, direct authorisations should be excluded from the scope of this article, since it will expose confidential business data to other operators.

Against this background, we urge the Members of the European Parliament to pay close attention to these comments so that the EU long distance fleets 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 lower than in the EU⁵.

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⁵ Resolution 2015/2091(INI) on common rules in respect of application of the external dimension of the CFP, including fisheries agreements