EU Social Partners in the fisheries sector recommendations for the trilogue discussions on the Regulation on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008

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Background

The EU fishing industry endorses the opportunity offered by this proposal to review the existing regulation, in order to further promote simplification, improve governance, align the text with the Control and IUU Regulations, better monitoring and enforcement of rules. However, there is a need to strike the right balance between the sustainable management of fishing activities outside Union waters and the need for solid and speedy administrative procedures.

In view of the general approach agreed by the Agriculture and Fisheries Council on 28th June 2016 and the European Parliament (EP) legislative resolution on the proposal dated 2nd February 2017, the EU Social Partners are pleased to provide hereafter some comments for the upcoming trilogue discussions.

Industry Recommendations

The sector does not believe that the above-mentioned objectives should be pursued to the detriment of sustainable fishing activities, by imposing excessively bureaucratic measures. This will certainly lead to a loss of competitive disadvantages for our fleets, a direct loss of employment (EU and 3rd country workers) and jeopardize food security. We must not forget the important role played by the long distance fleet in supplying our markets, since they catch around 21% of the EU's total catch for human consumption. Therefore, without prejudice to the primacy of the responsibility of the flag State, the EU must protect the principle of non-discrimination among fishing fleets operating in the same waters ensuring an international level playing field.

We particularly refer to the following articles:

- **Article 5.1.d - Eligibility criteria**

The fishing industry, in line with the opinion of the Council of the EU and the European Economic Social Committee, highlights that this provision sets a **double penalty system**, which is disproportionate, since the serious infringements committed by the vessel and the captain of the vessel (view of the EP) or the operator (view of the EC) would be subject not only to the strong penalties provided for in the Control and IUU Regulations, but also to the non-eligibility to obtain an authorisation for 12 months.

This provision, although included in the previous Regulation 1006/2008, was not applicable in practice (due to a drafting error). **In addition, even if a similar rule is envisaged in the EMFF, the inability to apply for the maritime fund cannot be put on equal footing with the inability to fish! Around 300 large vessels in the EU only have the possibility to fish outside EU waters, without any other alternative. Under the regime proposed they would have to cease the activity for one year, violating the right to work of all the crew.**

The problem becomes bigger due to the **lack of homogeneity** on the Control Regulations of the different Member States, as identified by the EP Fisheries committee, which could lead to extremely different penalties for the same infringement only based on the flag of the vessel in question.

Furthermore, this article infringes the **principle of non-discrimination**, since the same infringements do not incur the same penalties within and outside EU waters. For the same infringements, those fishing outside the EU would have an additional penalty such as non-eligibility to obtain a fishing authorisation for 12 months. This would mean creating a double standard for similar infringements.

We therefore recommend full deletion of this paragraph.

- **Article 7, paragraph 5 - 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 EP and the Council of the EU agree with this approach. "Cases of overriding policy reasons" clearly damages legal certainty. The operator must know at all times under which legal and factual grounds an authorisation may be removed. Any intervention to suspend fishing activity on precautionary grounds of scientific uncertainty is unlawful.

Therefore, the article should exclusively refer to cases of IUU fishing since there is a clear European legal framework regulation and as explained by the EC, the purpose of this proposal is to align the text with the Lisbon Treaty as well as the Control and IUU Regulations.

The spirit of the CFP concerning any serious threat to marine biological resources or the marine ecosystem[1], has the consequence of displacing the vessel for a maximum period of six months, yet the operator can continue fishing in another area. However, the text proposed by the EC would have the consequence of withdrawing the authorisation for which the operator paid beforehand preventing him from fishing, without offering an alternative.

We would propose the following wording:

5. Upon a request from the Commission, a flag Member State shall refuse, suspend or withdraw the authorisation in cases of **overriding policy reasons pertaining to the sustainable exploitation, management and conservation of marine biological resources or the prevention or suppression of illegal, unreported or unregulated fishing, or in cases where the Union has decided to suspend or sever relations with the third country concerned**.	5. Upon a **justified** request from the Commission, a flag Member State shall refuse, suspend or withdraw the authorisation in cases**: ~~overriding policy reasons pertaining to the sustainable exploitation, management and conservation of marine biological resources or the prevention or suppression of illegal, unreported or unregulated fishing,~~** **(a) of duly justified imperative grounds of urgency relating to the conservation of marine biological resources or to the marine ecosystem, resulting from proven engagement in IUU fishing in accordance with the criteria set out in Article 3 of Regulation (EC) No 1005/2008.** **(b) where the Union has decided to suspend or sever relations with the third country concerned.**

[1] See Recital 38 and 68 of the CFP basic regulation No 1380/2013. Recital 38: "The Commission should be authorised to adopt temporary measures in the event of a serious threat, requiring immediate action, to the conservation of marine biological resources or to the marine ecosystem **resulting from fishing activities**. Those measures should be established within defined time-frames and should be operational **for a fixed period of time**."

	Those measures should be established within defined time-frames and should be operational for a maximum period of six months.

- **Article 11, paragraph c - Conditions for fishing authorisations by the flag Member State**

The reference to "**financial penalties**" must be deleted since this provision would expose fishing vessels operating in third country waters to the control systems of these countries without any prior democratic validation of these systems in many cases. 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 lack of compliance by Mauritanian authorities with the Protocol's manning requirements).

- **Art. 17, paragraph 1 point a - new**

We encourage the policy-makers to solve the problem of "Dormant Agreements" in line with the EP position. Therefore, we propose that the European Commission must automatically denounce the Protocol of a given sustainable fisheries partnership agreement whenever it has not been in force with the relevant third country for at least the three preceding years.

- **Article 18 - Conditions for (direct) fishing authorisations by the flag Member States**

The European Commission proposal, laying down the conditions to apply for a direct fishing authorisation, imposes costly measures and creates excessive bureaucracy. This is particularly worrying concerning the **evidence of sustainability**. The EU cannot transfer its own responsibilities and duties to the operators. The Council wording is therefore more realistic and practicable, reducing excessive red tape.

Furthermore, the reference to **surplus** in direct authorisations should be deleted, since it is only mandatory for SFPAs. In this context, the "surplus" is regulated under Title II of the CFP which solely refers to SFPAs, therefore the operator should not be compelled to demonstrate the existence of the surplus in the 3rd country waters (under this Regulation's Section). It should also be reminded that the identification of any possible "surplus" stock is a political decision to be made by the 3er country competent authorities. The evidence provided by the operator, proving the sustainability of the planned fishing activities in 3rd country waters, should suffice.

- **Article 39 - Union fishing authorisation register**

While the fishing industry supports 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 paragraph 2 by the European Commission, 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.

The information concerning the **beneficial owner** (as proposed by the EP) must be addressed in a cross-sectoral fashion through an EU Law not through this Regulation. Otherwise the EU would be imposing obligations on the fishing sector which are not required from other sectors (mining, gas, oil, shipping, ...) creating discrimination.

Furthermore, the proposal from the EP may violate private data, since it will disclose private information such as the names and addresses of the agents and owners of fishing vessels, which is not allowed by the current legislative framework (see Articles 3 and 11 of Regulation 26/2004 on the Community fishing fleet register).

The EU fishing industry would recommend the following wording:

2. The list of fishing authorisations in the register shall be publicly accessible and contain each of the following information: (a) name and flag of the vessel; (b) type of authorisation; and (c) authorised time and zone of fishing activity (start and end dates; fishing zone).	2. The list of fishing authorisations in the register shall be publicly accessible and contain each of the following information: (a) name and flag of the vessel; (b) type of authorisation; and (c) authorised time and zone of fishing activity(start and end dates; fishing zone). ***Paragraph (c) shall only be applicable to sustainable fisheries partnership agreements and vessels operating in RFMO regulated waters.***

Against this background, we urge the policy-makers 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 EU.

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