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Europêche comments on the Proposal for a regulation amending the technical measures and control regulations to implement the landing obligation COM (2013) 889

General remarks

After having analysed the Commission's proposal in the light of the recent reform of the CFP (Regulation (EU) 1380/2013), Europêche would like to express its disappointment and concern with regard to some critical issues.

The Commission considers the proposal in the explanatory memorandum as a "transitional legal framework", in view of a more homogeneous legislation on technical measures in order to allow the implementation of the landing obligation as of 1st January 2015 without legislative barriers to the approved reform.

Europêche criticises the procedure selected (ordinary legislative procedure (ex co-decision)) by the Commission to regulate the landing obligation which is contrary to the principle of regionalisation and future discard plans. In fact, references to regionalisation are conspicuous by its absence throughout the text. The Commission, instead of proposing a new regulation removing contradictions by way of deletion, has introduced a new set of rules which will create further legal and interpretation issues (aggravated by the inconsistency of the terms used) without any prior input from the stakeholders.

The "elimination of discards" is not a goal itself but an instrument to reach the goal of responsible and sustainable use of resources. Because of that the whole regulation should be only directed to species with catch limitations (TAC). Hence, the wording of the regulation has to be strictly examined and redrawn so that it covers only species with catch limitations.

In addition to the heavy burden of formalities which are already required to shipowners and captains under Regulation 1224/2009, the approval of this Regulation would add new requirements in order to align the existing regulations with the provisions of the reform, especially in terms of the landing obligation of discards and control. These are obligations which will have negative consequences and are not easily quantifiable but significant in economic terms, for both operators and Member States.

Having considered the above, it is perhaps questionable whether changing regulations already in force for a temporary period will be advisable given that a subsequent legislative act will be necessary to change back the same regulations once the art. 15 of the EU Regulation will be fully operational in 2019. Therefore, **Europêche recommends focusing on the operational implementation of the landing obligation in 2015 for pelagic fisheries and leaving the rest of non-urgent legislation changes to a later stage.**

Specific comments on Technical Measures

Article 1 (Amendments to Regulation EC 850/1998)

The definition of “**unintended catches**” is introduced in Art. 3.i. The EU catching sector does not share the need to provide a specific definition, nevertheless, if introduced it should then exclusively refer to unintended catches of quota species giving that non-quota species are not part of the discards ban.

Concerning Art. 4, nothing is proposed about the so-called “**one net rule**” in the omnibus proposal. This regulation should be repealed as it was not meant for the pelagic fishery in the first place, and it hampers innovation on selectivity (e.g. use of escape panels with other – forbidden – mesh sizes).

Two additional paragraphs concerning the **catch composition rules** are inserted in Art 4.1 and 2. Catch composition rules should be abolished altogether as they have no function anymore under the regime of a discards ban. Simply proposing derogations of these rules - as proposed in the omnibus – is a too soft and confusing approach. Furthermore, basing a derogation on the level of “intentionality” in the catch is troublesome given that a strong element of subjectivity is introduced.

The Art. 4.1 includes a new paragraph on **mesh size limitations**. Européche believes that it is better to leave the choice for mesh size free to fishermen in order to achieve better selectivity. The discards ban in itself is the strongest encouragement for the search for higher selectivity.

In relation with this article, Européche strongly recommends the elimination of the **KW-days-system** of the long term plan for North Sea cod (1342/2008), given that it regulates a pointless system that forces fishermen to use smaller mesh sizes to fish economically sound simply because smaller mesh sizes get more days at sea. Fishermen shall no longer be punished for the use of bigger mesh sizes. Notwithstanding, the omnibus proposal already contains modifications of long term plans for Baltic cod (1098/2007) and Irish sea cod (254/2002).

New article 15.3, provides that “before start fishing, masters of the fishing vessels shall ensure they have quotas for stocks subject to catch limits that are sufficient to cover their likely catch composition and the permitted percentages during the trip”. Apart from the vagueness of the terms used in the text, it is surprising that the skipper must ensure the composition of the future catch in advance. Européche calls for the maintenance of at least the timing provided in current Art. 15.3, i.e. after the first 24 hours of a fishing voyage. In addition, the EU catching sector demands full clarification on the procedure for fishermen to comply with this article (notification and other legally binding formalities), particularly on the legal consequences the skipper could face if he miscalculates or fails to provide the future catch composition (same logic is applied to Art. 12 EC 2187/2005). Nevertheless, Européche welcomes the abolition of the current Arts. 15.2 and 15.3.

Minimum conservation reference sizes (MCRS) are regulated in Art. 17. The omnibus regulation proposes to replace the expression “Minimum Landing Size” (MLS) by MCRS. This way, the legislator decides what size should be used for human consumption and what size for non-human consumption. Européche believes this provision could lead to the underutilisation of discards and therefore less revenue from the landed discards, which means a far more costly discard ban for the fishing industry. Therefore, minimum conservation reference sizes should be reduced to the minimum value which is already established, if not abolished. Markets forces would be a better indicator of those sizes.

Article 2 (Amendments to Regulation EC 2187/2005)

Further to our comments on Art.4.1 EC 850/1998 (above), Europêche is concerned about the new prohibitions to fish for certain species using a **mesh size** not provided for in the new subparagraph added to Art.3 as well as for salmon and sea trout under certain conditions contained in Art. 17. Europêche fails to see how removing legal barriers can be achieved by the introduction of further provisions - restricting the use of certain mesh sizes.

Article 3 (Amendments to Regulation EC 1967/2006)

As far as Art. 15 is concerned, it should be noted, that the term "sold" appears redundant given the following words "*offered for sale for human consumption*" and it could be interpreted as if any type of sale is prohibited, even if it is considered that the legislator wants to prohibit only the sale for direct human consumption. The text should be amended by deleting the word "sold".

The sale of the product compulsorily landed will be essential to compensate, even if only partially, for the new burdens on businesses introduced by the new legislation.

In addition, it is particularly onerous for some Italian fisheries, the deletion of paragraph 3 of Article 15 of Regulation 1967/2006, which allowed the use of juvenile sardines for consumption, under the control of MS. This possibility would be absolutely excluded from the new text.

Specific comments on Control Measures

Article 7 (Amendments to Regulation EC 1224/2009)

This new Regulation brings about with no doubts some critical aspects for many European fisheries:

Given that Art.7 introduces new **fishing authorizations** to the fleets affected by the landing obligation which entails the application of new rules to medium and small fleets, there will be an increase in the number of vessels that need authorization and will require them to meet related obligations. Consequently, Europêche demands an increase in the number of exemptions.

Art. 14 introduces the obligation **to record all quantities of each species caught and kept on board**, accordingly it would be eliminated the limit of 50 kg for each species retained on board for vessels of 10 meters' length overall or more. Currently, below this limit there is no obligation to fill in the respective column of the fishing logbook. In addition, the obligation to **record as a separate entry** the quantities of each species below the applicable minimum conservation reference size becomes mandatory. The only sign of flexibility granted by the proposed text (paragraph 3) is the **margin of tolerance** between the estimated weight recorded in the fishing logbook and the actual weight in landing declaration (20% > 50 kg), which should be applied to all catches.

Europêche considers inapplicable in practice the provisions set out in Article 25a concerning the utilisation and installation of **remote electronic monitoring** in EU fishing fleet. Apart from the costs and the direct violation of the privacy and dignity of the workers, it is not physically possible to equip the vast majority of the fleet (especially smaller) with devices summarily described in the text (cameras, data storage devices, sensors attached to the winch...). This provision should therefore be completely deleted.

Nevertheless, Europêche would like to get some clarification on the obligatory nature of the use of cameras on board; particularly on the possibility for MS to propose alternative measures, the number of cameras and sensors needed for each boat and who will incur all these costs.

It is proposed in the text other significant economic burdens for fishing companies, such as **separate stowage of catches below the minimum conservation reference sizes** included in new Article 49a. This obligation constitutes a heavy burden especially for small-scale fishing companies, which will have less space for stowage of the catches with allowed size for human consumption. Europêche fails to see how this measure can be implemented in practice, if not aggravate the problem of discards.

Art. 49 refers to the “**de minimis rule**”; the catching sector calls upon the Commission to ensure the practical and operational use of this regime indispensable for the survival of the industry, especially in mixed fisheries. The Commission should guarantee that small amounts of by-catches captured by fishermen can fall under this system, avoiding the incoherence of a quota allocation and reporting of single individual fish with a weight of less than 1 kg. Accordingly, Europêche demands the maintenance of the 50 kg threshold limitation for practical reasons.

It is worth mentioning here the **survival rate system** established in Art.15.4b CFP. The panorama is described by a lack of science on the facts and figures. Europêche calls for the launch of studies and research on this field to gather enough information for managers to take sound decisions and for the industry to have a very clear and implementable framework, appropriate to each situation.

Article 49c provides that the competent authorities “**shall ensure that these catches are stored in such a way to make them distinguishable from fisheries products destined for human consumption.**” The terms are vague and ambiguous which could refer either to labeling or different containers; further it is not clearly established who would have to bear these obligations and the related charges.

At the end of the new paragraph 1 of Article 56 it is mentioned “**direct human consumption**”. It would be advisable to adopt this wording in all other parts of the proposed regulation when it comes to general human consumption.

Article 58, paragraph 5 extends the obligation to include separate information referred to the **traceability** of undersized landed catches. In fact, this obligation is extended to all levels throughout the supply chain (sales notes, take-over and transport document). Europêche believes that these rules should be exclusively applied to products intended for direct human consumption.

Concerning the new Article 73a, it is provided for that **MS may deploy control observers on board** to ensure compliance with the rules of landing discards. The problem is linked to the related costs that absolutely cannot be incurred by ship-owners, now that those costs can be partially or fully imposed to operators at the discretion of MS. Further, inspectors and operators need to have a clear legal framework to ensure legal certainty and avoid misinterpretations of control measures.

Finally, Arts. 90 and 92 declare every infringement of the landing obligation as a “serious” infringement and consequently allocate penalty points, which go far beyond the relativity and proportionality principles. Europêche calls for more flexibility and legal certainty, finding comparable solutions to other penalties which are under the jurisdiction of Member States.