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REPORT

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 1)/Council

No. Cion prop.: 12514/11 PECHE 187 CODEC 1166 - COM(2011) 425 final
12516/11 PECHE 188 CODEC 1167 - COM(2011) 416 final

a) Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy
- *Orientation debate*
b) Proposal for a Regulation of the European Parliament and of the Council on the Common Organisation of the Markets in Fishery and Aquaculture Products
- *State of play*

A) Common Fisheries Policy

I. INTRODUCTION

1. On 13 July 2011, the European Commission adopted a proposal for a new Basic Regulation on the Common Fisheries Policy (CFP).

2. To this proposal relates an overhaul of the Common Organisation of the Markets in Fishery and Aquaculture Products - the proposal was adopted the same day¹ -, and the proposal for a new European Maritime and Fisheries Fund (EMFF), which the Commission adopted on 2 December 2011.²
3. The proposal's general objective is to ensure fisheries and aquaculture activities that provide long-term sustainable environmental, economic and social conditions, and contribute to the availability of food supply.
4. The European Economic and Social Committee and the Committee of the Regions gave their opinions on 28 March 2012 and 4 May 2012, respectively.³
5. The Working Party on Internal and External Fisheries Policy completed its second reading in February 2012.⁴
6. After three orientation debates held in March, April and May 2012, the "Agriculture and Fisheries" Council reached a partial "general approach" in June 2012.⁵ This general approach was finalised at the Council meeting of 26 February 2013, in particular concerning the implementation of the discards ban and related provisions (Articles 15 and 16).⁶
7. The European Parliament voted on its position at first reading on 6 February 2013.⁷
8. The Working Party examined the Parliaments' amendments during its meetings from January until 8 March 2013.
9. The Permanent Representative Committee adopted a mandate to open negotiations on 13 March 2013.⁸

¹ Doc. 12516/11 PECHE 188 CODEC 1167 - COM(2011) 416 final.

² Doc. 17870/11 PECHE 368 CADREFIN 162 CODEC 2255 - COM(2011) 804 final.

³ OJ C 181, 21.6.2012, p.183; OJ C 225, 27.7.2012, p.20.

⁴ Doc. 5070/2/12 PECHE 7 CODEC 9 REV 2.

⁵ Doc. 11322/12 PECHE 227 CODEC 1654.

⁶ Doc. 11322/1/12 PECHE 227 CODEC 1654 REV 1.

⁷ Doc. 5255/13 CODEC 61 PECHE 39 PE 7.

⁸ Docs. 7164/13 PECHE 83 CODEC 498 and 7165/13 PECHE 84 CODEC 499.

10. The three institutions have had informal trilogue meetings so far on 19 March, 26 March, 8 and 9 April 2013. Further meetings are foreseen until end of May and probably beyond.
11. The Presidency organises an informal meeting of the Directors-General for fisheries on 15 to 17 April, which is dedicated to discussing the development of negotiations on Maximum Sustainable Yield (MSY), landing obligation, regionalisation and capacity management.

II. MAIN ISSUES OF DIVERGENCE

12. The negotiations have shown that the following core issues for the CFP reform are particularly difficult to resolve:
 - a) Maximum Sustainable Yield (MSY)
 - b) Scope and detail of the landing obligation
 - c) Regionalisation process
 - d) Capacity management and related measures/sanctions.
13. Important gaps can also be observed concerning the following elements: Environmental obligations and policies vis-à-vis Common Fisheries Policy; transparency and public access with regard to data handling and reporting; rules determining the fixing and distribution of fishing opportunities; composition of Advisory Councils; Member State obligation to create fish stock recovery areas; and empowerment for the Commission to adopt delegated acts¹⁴.
14. The Presidency prepared a discussion paper attached to this report which summarises the controversial elements of the core outstanding issues. The Presidency invites delegations to provide an orientation concerning the way forward on these issues, in accordance with the questions laid down in the annex.

I. INTRODUCTION

1. On 13 July 2011 the European Commission presented to the Council its proposal on the Common Organisation of the Markets in Fishery and Aquaculture Products ("CMO").
2. The CMO proposal is part of the CFP reform package and is designed to contribute to the objectives of the proposed new CFP Regulation. Among the objectives are:
 - the simplification of legal procedures and reporting obligations;
 - strengthening the role of Professional Organisations;
 - a reduction in market support (discontinuation of the withdrawal price system, phasing-out the support for storage aid); and
 - better information to consumers.
3. The European Economic and Social Committee and the Committee of the Regions gave their opinions on 28 March 2012 and 4 May 2012, respectively.⁹
4. After an orientation debate held on 19 March 2012, the "Agriculture and Fisheries" Council reached a "general approach" in June 2012.¹⁰
5. The European Parliament voted on its first reading position on 12 September 2012.¹¹
6. The Working Party on Internal and External Fisheries Policy examined the Parliament's amendments between January and 5 February 2013.

⁹ OJ C 181, 21.6.2012, p. 183; OJ C 225, 25.7.2012, p.20.

¹⁰ Doc. 10415/12 PECHE 192 CODEC 1445.

¹¹ Doc. 13616/12 CODEC 2093 PECHE 334 PE 390.

7. On 13 February 2013, the Permanent Representative Committee adopted a negotiating mandate¹² for an informal trilogue with the EP, which was held on 27 February 2013. A second trilogue was held on 27 March 2013, based on a revision to the mandate made on 20 March 2013.¹³
8. During the trilogues, the positions converged towards compromises on the large majority of political and technical issues. There was general understanding in the second trilogue that references to the EMFF in the CMO Regulation should not condition the outcome of the EMFF Regulation. Nevertheless, some kind of signalling or sign-posting was deemed to be necessary

II. MAIN OUTSTANDING ISSUES

9. Main outstanding issues concern the mandatory consumer information (Articles 42 to 44) and delegated acts (Articles 24, 33, 41 and 46).
10. Regarding mandatory consumer information, the Council has stressed the view that the date of catch (Commission position) or the date of landing (Parliament position) should not be included in the mandatory information, as they are not sufficiently relevant for the consumer and could actually mislead consumers regarding the quality of the products. The European Parliament's position also includes mandatory information on the gear used and on the fish stock from which the product was taken, and a more detailed indication of the area in which wild fish was caught. The European Parliament is revisiting its position, but convergence has not yet been achieved.

¹² Doc. 6457/13 PECHE 59 CODEC 341.

¹³ Docs. 7160/13 PECHE 82 CODEC 496 and 6457/2/13 REV 2 PECHE 59 CODEC 341.

The Commission insists on the "date of catch" as this was an information available from traceability obligations, relevant to the consumer and a tool for product differentiation. It explained that the date of catch, which according to the Commission Implementing Regulation¹⁴ has to be provided at first sale, can comprise several days or a period of time corresponding to several dates of catches. During the discussion on ways forward, it was also suggested that some additional information might be provided mandatorily on the barcode or other code that accompanies the product. The Commission also insists on more mandatory information on preserved products.

11. On the issue of delegated acts, the Council expressed its preference for implementing acts, promoting the inclusion of necessary details in the Regulation. The European Parliament, based on its internal legal advice, has misgivings on some of these suggestions (Articles 25 (1) b) and d), 34 a), 41 and 46), as it considers the issues to belong to secondary regulation rather than to the harmonisation of implementation. The Commission insists on the empowerments foreseen in its proposal. The Council is going to provide further informal drafting suggestions in order to underline the nature of implementing acts.
12. The third trilogue is planned for 8 May 2013.

¹⁴ Art. 67 (9) of Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011, OJ L 112, 30.4.2011, p. 1.

Presidency Discussion Document***on the Proposal for a Regulation of the European Parliament and of the Council******on the Common Fisheries Policy (Basic Regulation)***

- *Way forward and flexibilities in the context of the positions adopted by Council (Feb 2013 and negotiating mandate of 13th March) and Parliament's First Reading position (Feb 2013), and the ongoing process of trilogues with Parliament and Commission.*
- *Key points for consideration: Work programme and specific issues: Landing obligation, MSY, Regionalisation and Capacity management.*

Objective of Paper: To inform the Council of the progress from the trilogues to date, outline the outstanding issues and stimulate debate on possible ways forward to broker common ground on the key political issues.

A. Context of Discussion:

1. **State of negotiations.** The Council of Ministers finalised its overall General approach on the Basic Regulation of the CFP on the 26th February. The European Parliament voted on its position at Plenary on 6th February. At COREPER, a Council mandate was agreed on 13th March. The first trilogue between Council, Parliament and Commission took place on 19th March with further trilogues on 26th March, 8th April and 9th April.

The meetings have been conducted in a cordial and professional atmosphere, and while there has been some progress, it has been slow. We can differentiate the process into three categories:

1. Issues where we could sign off on at the trilogue on the basis of the COREPER negotiating mandate - these have been limited in number.

2. Where it was acknowledged that there was broad agreement on the substance and overall objective but where there were differences in how this was set out in the texts. The differences in some cases may not have been significant, and to achieve a common text the issue was passed onto a technical group for further consideration of drafting alternatives. This involved a significant number of items.
3. Finally, where the emphasis and substance of both Parliaments and Council's positions were significantly different, it was decided to postpone discussion till a further date.

The trilogues involve detailed negotiations with the EP rapporteur for the dossier; the Chair of the Pêche Committee is heading the EP team. The shadow rapporteurs are also present as part of the EP negotiating team.

At this point there has been a first reading of the majority of the text. The main issues not yet discussed are regionalisation (Articles 17-20 and 21-24), fishing opportunities (Article 16) and capacity management (Articles 27 -36). Further trilogue meetings are planned up until the end of May as well as a series of technical meetings to support the work of the trilogues.

2. **Multi-Annual Plans.** The issues relating to inter-institutional responsibilities within Multi-Annual Plans continue to be an area of concern. The Presidency is actively seeking to find an acceptable accommodation that will allow progress on the Reform. The Parliament and the Commission have referred the matter to the European Court of Justice in the context of the decision taken by the Council last December to amend aspects of the Cod Recovery Plan Regulation under the provisions of Article 43(3) of the Lisbon Treaty. The Presidency considers that in the context of this new development we must work to deliver both a reformed CFP and make progress where possible on Multi-Annual Plans which are the cornerstone of the planned reformed CFP.

In this situation, the Presidency considers that the institutions will need to work in the context of the Reform legislation in a legally neutral way that respects the positions of the Parliament and the Council.

B. Programme of work and timelines

The Presidency, the Parliament and the Commission held a recent informal meeting at political level to review progress and consider the planned work programme and timelines. All institutions have agreed to significantly intensify the work programme. It was agreed that a plan of work will be pursued in order to have established agreed positions and identify areas where the negotiating mandate of the institutions does not support reaching agreement. It was agreed that every effort will be made to have a clear understanding of the position by early May. The Presidency plans to submit a proposal for a revised mandate for consideration at COREPER on the 2nd of May. If required, any significant political issues which can not be progressed will be referred to the May Agriculture and Fisheries Council (13/14 May).

C. Summary of outstanding issues and points for consideration and discussion

1. Maximum Sustainable Yield (MSY) Article 2 (2)

Overall, agreement exists on enshrining MSY as a target in the CFP, with a clear deadline for achieving it. Differences can be summarised as follows:

- The Council approach involves setting **fishing mortality MSY** by 2015 where possible and setting an end date of 2020.
- Where stocks are of common interest with third countries, consultations will be held with a view to finding an agreement on MSY exploitation where possible.
- The general approach requires an "exploitation rate" being at least at MSY.
- The Parliament position wants fMSY levels set by 2015 “*that should allow fish stocks to recover, by 2020 at the latest, above levels that are capable of producing the maximum sustainable yield and **all recovered stocks to be maintained at these levels***”.

- The Parliament approach appears to aim at allowing stocks to recover above bMSY (biomass MSY) by 2020. It also requires that an "exploitation rate" being set above MSY.

2. Discards/Landing Obligation – Article 15

Overall, what has been agreed by Council and Parliament independently are not too dissimilar with the overall objective closely aligned. However, the differences in detail involve:

- There are divergences in the timing sequence for introduction of the discard ban, with the Council applying a start date for target stocks and an end date for non target stocks in a fishery in a region and the Parliament setting a date for overall application on a regional basis.
- Parliament do not refer to a *de-minimis* option, Council favours an incrementally decreasing scale from 9% to 7%.
- Parliament suggest a 5% year-to-year flexibility compared to the 10% outlined in the Council general approach.
- Parliament suggest a 3% ceiling of unwanted catches that can be deducted from the target species compared to the 10% favoured by the Council.
- Council allows for a 2 year transitional regime, where all other options have been exhausted, species may be landed without being set against quota subject to a limit of 5% of the target stock for any fishing trip. The use that may be made of these landings is restricted. The Parliament does not provide a similar approach.

3. Regionalisation – Article 17

There is broad support for the principle of regionalisation as a concept but significant divergence exists between the Council General approach and the Parliament on how this will be achieved.

- All agree that regionalisation would involve Member States discussing the detail of conservation measures, including the implementation of the discards ban, with relevant stakeholders through the Advisory Councils (as appropriate to the individual fishery), and these consultations will be facilitated by the Commission including providing a scientific contribution.
- The Council's general approach requires all relevant Member States to agree measures which would then be implemented by the Commission in legal EU text for all fishermen equally where measures are agreed by unanimity of the Member States involved. These measures would be implemented in EU Law. Where there is no agreement, the measures would be taken by co-decision.
- The Parliament proposes in essence that each Member State be mandated to implement national measures for their own fleet within a general framework set down in a Multi-Annual Plan and seek to have a co-ordinated approach with Member States sharing the same fishery. The Commission would intervene if the national measures are insufficient or not adopted timely.

4. Capacity Management - (Articles 5 (20) definitions, 34 & 35 GA)

- The European Parliament position differs from the Council's agreed general approach in that the EP requires a broader definition of fleet capacity taking into account all parameters influencing the vessel's ability to catch fish, for instance the character and size of the vessels fishing gear.

- The Council requires Member States to report annually on delivering a balance between fleet capacity and fishing opportunities. It requires the Member State to take action to adjust fishing capacity where it is out of balance and report how it will achieve a balance including timeframe. The first report is linked to ex-ante conditionality in accordance with the EMFF. It furthermore allows Member States to request to have fishing vessels subject to Transferable Fishing Concessions excluded from the capacity ceiling.
- The EP specified more detailed information required in an annual report. EP want a more prescriptive response where the report shows up discrepancies between fleet capacity and fishing opportunities, including interruption in EU funding under the EMFF if the report is not submitted or the submitted programme is not delivered.

There seems to be the potential for adequate common ground between the Council, the Parliament and the Commission to reach an ‘early second reading’ agreement on the Basic Regulation. In order to assist progress in the Trilogue discussions between the Parliament, Council and the Commission the views of Council on the following questions are sought:

1. *Are Member States prepared to support the intensive work programme planned over the coming weeks in order to allow for consideration of the Council mandate at COREPER on the 2nd of May and if required at Council on 13/14 May?*
2. *In the context of the positions of the Parliament and the Council on the key issues identified above, what is the scope for flexibility concerning these issues, and on which aspects?*
3. *In the context of the Reform in respect of Multi-Annual plans, do Member States support the possible approach outlined above under A.2?*