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Subject : Proposal for a Regulation of the European Parliament and of the Council on the
Common Fisheries Policy
- Non-paper from the Presidency

Delegations will please find attached a non paper from the Presidency introducing the Ministers' discussion on regionalisation at the "Agriculture and Fisheries" Council on 27 April 2012.

Presidency non paper**Contribution to the Ministerial discussion on regionalisation
at the 'Agriculture and Fisheries' Council on 27 April**

For a long time there has been a huge demand for including a more regionalised approach in the Common Fisheries Policy to take into account the specificities of the different sea-basins in the EU. This demand has further increased in recent years with the adoption of the Lisbon Treaty and the need for adapting decision making procedures to this framework. Many ideas have been presented ranging from - establishment of new formal structures with Regional Councils including Member States and stakeholders taking decisions in common - to a continuation of existing informal cooperation in different areas such as Scheveningen in the North Sea and BALTFISH in the Baltic Sea.

The Advisory Councils (ACs – former Regional Advisory Councils) that have been established since the reform of the CFP in 2002 have played an important role in bringing fishermen, environmental organisations etc. together to discuss fisheries management. Their role will be important within a regionalised framework.

The Commission's proposal for a new Regulation on the Common Fisheries Policy (CFP)¹ includes a model for regionalisation as a response to the demand for a regionalised approach.

Other draft models have been presented on principles and working methods for regionalisation.

As a contribution to the debate, the Danish Presidency in this paper presents ideas for the envisaged regionalisation of the CFP. It is not an exhaustive description of all possible solutions. This paper is intended to be used for further reflections and ideas to be considered.

1. General principles

There are two main questions that must be solved from the outset: What would be the legal framework for a regionalized approach and what would be subject to a regionalized approach.

The legal framework

According to the Treaty, decision making in fisheries cannot be delegated to any body other than to the European institutions, or to the Member States in the event of explicit empowerment.

¹ COM (2011) 425, Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy.

Any discussions among relevant Member States may not be formalised (e.g. entailing voting procedures), i.e. there is no room for an 'intergovernmentalisation' of the powers of the Union. Regionalisation is a possibility, not an obligation.

There seems to be a need for flexibility within the EU framework for regionalisation to adapt to the specific regions. If Member States in a region from the outset do not find it appropriate to make use of the instruments for regionalisation, the normal procedures must apply, i.e. adoption of general measures in the ordinary legislative procedure including possible delegation to the Commission to adopt implementing acts and/or delegating acts as to the details. In respect of the Treaty, basically there seems to be two overall models for regionalisation:

1. The model proposed by the Commission, delegating decision making powers to individual Member States;
2. A model where the final decisions remain within an EU framework.

Within both models there are a number of variations and combinations.

The subject for regionalisation

According to the Commission proposal multiannual plans or regulations on technical measures can be subject to regionalisation. There seems to be a general agreement that multiannual plans should be the core of a regionalised approach.

The regulations adopted by the European Parliament and the Council should focus on objectives, targets, minimum common standards and results, and delivery timeframes. The European Parliament and the Council may on a case-by-case basis decide the level of details in the “high-level” plan – and thereby also decide the scope for a regionalised approach.

Apart from cooperation on the details to be implemented to achieve the objectives of a high-level multiannual plan, a region could also take initiatives to develop draft proposals for the high-level multiannual plan and other issues that could be considered by the Commission and – if the Commission deems it appropriate – be presented as a draft regulation to the European Parliament and the Council.

2. The decision making model proposed by the Commission

The Commission proposal establishes that in future multiannual plans or regulations on technical measures are to be adopted by the European Parliament and the Council, Member States could be empowered to establish measures to implement the conservation targets.

The Member States concerned would be empowered to adopt national measures applicable to vessels flying their flag and fishing in Union waters. It is not necessarily identical measures that they adopt. The Commission's proposal does not define how Member States with a direct interest in a fishery cooperate and achieve an agreement at regional level. If they fail to agree amongst themselves, the Commission would be empowered to step in to fill the gap through delegated acts. The Commission will not undertake ex-ante examination of Member State measures to establish whether they are likely to ensure that the objectives and targets of a multiannual plan would be reached since, if the measures adopted by Member States are found to be ineffective in reaching the conservation targets, the Commission would be empowered to adopt the same kind (but alternative) measures as those for which Member States would be empowered to adopt national measures. Criteria would be required for the assessment of national measures that could trigger the step-in by the Commission, in terms of scientific basis, timing of the assessment, consultation of Member States during the process, the possibility for Member States to revise their measures before the Commission steps in, and any further consultation of stakeholders.

3. A decision making model where the final decisions remain within an EU framework

Another model could be that the Member States with a direct interest develop (unanimously) positions on relevant measures for the implementation of a multiannual plan adopted by the European Parliament and the Council, based on the best available scientific advice, and cooperation with stakeholders.

If there is no unanimous agreement at regional level, the ordinary legislative procedure would apply (co-decision).

Unanimous regional positions should be transmitted to the Commission, for it to prepare delegated or implementing acts on the measures in question (if it agrees that the position complies with EU law).

This model would include an ex-ante examination by the Commission before the adoption of decisions unanimously agreed within a region through a Union act.

The model allows for flexibility to adapt to the specific regions and cater for each region's specificities and to allow for diversification in the implementation procedures (for example delegated or implementing acts).

4. Comparison of the two decision making models

The model of the Commission leaves much flexibility to each Member State as they can decide the content of national implementing rules on the condition that it ensures fulfilment of the overall objectives of a high-level plan.

However, concerns have been expressed towards such a solution, as it means that different national legislation in a sea basin would apply, implying the lack of a level playing field and difficulties in relation to enforcement and control.

Furthermore, since there is no ex- ante evaluation of the measures adopted, the Member States might believe that they fully fulfill their obligations, but later – the Commission might decide that this is not the case.

The other model would ensure a level playing field for fishermen from different Member States as the detailed measures will be adopted through a Union act. Control and enforcement would be easier to carry out.

Since there would be an ex-ante evaluation of the measures, the Member States will know in advance that, if the measures are correctly implemented, they fulfil their obligations.

5. Role of the Advisory Councils

The work of the Advisory Councils would be an important element of consultation feeding into the preparation of regional positions, as well as relevant Commission proposals and acts. They should have a strengthened advisory role in relation to the region to which they belong. While strengthening the regional approach there is a need to consider if the structure of the Advisory Councils should be revised, including the balance between the fishing sector, including representatives of employed fishermen and other interest groups such as environmental organisations and consumers.

In the Commission's proposal, the consultation procedures as regards Advisory Councils would remain formally unchanged. The Commission's proposal leaves flexibility to define the operational arrangements to be put in place on how the Member States would be interacting with the Advisory Councils.

The other draft models presented imply that Member States discuss the details of fisheries management with stakeholders, including the Advisory Councils, without detailing the operational arrangements. It could be considered to have an obligation to consult Advisory Councils on relevant topics.

6. Other aspects

Administrative and financial burdens

A regionalised approach will increase administrative burdens of Member States in its cooperation and work preparing draft proposals etc. More meetings in regional fora must take place and also for the Advisory Councils, their workload will increase. This issue must be sufficiently addressed. In this context there is a need to consider whether the funding within the European Maritime and Fisheries Fund covers the needs, such as support for transnational projects etc.

The Mediterranean, the Black Sea and the Adriatic

In the Mediterranean, there are currently no EU management plans. Member States have under the current legislation an obligation to put in place management plans for certain fisheries conducted in their territorial waters, which may also exploit straddling stocks (i.e. stocks distributed beyond territorial waters). These plans must be based on common standards, and are adopted by the Member States after the scrutiny and assent by the Commission.

The wide distribution of several species and the relatively limited extension of EU waters in the Mediterranean require coordination with non-EU countries. In this regard, coordinated actions need to be developed in regional fisheries management organisation (e.g. the General Fisheries Commission for the Mediterranean (GFCM) etc) to enhance effectiveness and level playing field conditions.

Several shared stocks are identified also in the Black Sea and international cooperation, also through the GFCM, is relevant in this context as well.

It must also be considered to establish an Advisory Council for the Black Sea to further strengthen the regional cooperation in this area.