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Delegations will find attached a copy of the opinion of the European Economic and Social Committee on the above-mentioned proposal.

European Economic and Social Committee

NAT/631
The landing obligation

Brussels, 29 April 2014

OPINION

of the
European Economic and Social Committee
on the

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009 and repealing (EC) No 1434/98 as regards the landing obligation

COM(2013) 889 final – 2013/0436 (COD)

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On 13 January 2014 and 17 December 2013 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Articles 43 and 304 of the Treaty on the Functioning of the European Union, on the:

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009 and repealing (EC) No 1434/98 as regards the landing obligation COM(2013) 889 final – 2013/0436 (COD).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 April 2014.

At its 498th plenary session, held on 29 and 30 April 2014 (meeting of 29 April), the European Economic and Social Committee adopted the following opinion by 199 votes to 1 with 7 abstentions.

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1. Conclusions and recommendations

- 1.1 Following the adoption of the new Common Fisheries Policy (CFP), which introduces changes to the landing obligation not only for TACs (Total Allowable Catches) but also for species with minimum conservation reference sizes, the EESC believes that it is crucial to adapt this landing obligation to the legislation in force, which requires fishing operators to discard in certain circumstances.
- 1.2 Nevertheless, it believes that the Commission's proposal is unnecessarily complicated and will generate an undue and disproportionate amount of additional work for fishing operators when it comes to applying the landing obligation. As a result, it advocates opting for more pragmatic, clear, straightforward and flexible rules that genuinely give fishing operators time to adapt during a transitional period, without facing heavy penalties.

- 1.3 The EESC regrets that a prior impact assessment was not carried out in order to study the repercussions of the landing obligation for each fleet.
- 1.4 The EESC believes that technical measures are fundamental to fishing activities and that, for this reason, any related decisions should be taken following direct contact with ports; they should be specific to concrete cases, timely and based on fast-track and efficient decision-making processes that can be adapted to changing circumstances and developments concerning the relevant species.
- 1.5 The EESC urges the co-legislator to give consideration to its comments regarding the new definitions, catch composition, the recording of catches, the new control obligations, fishing authorisations, margins of tolerance, closed-circuit television (CCTV) monitoring and penalties.

2. Background

- 2.1 Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy was adopted on 11 December 2013. This regulation came into force on 1 January 2014.
- 2.2 Its adoption repealed Council Regulation (EC) 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, which had been in force from 1 January 2003 to 31 December 2013.
- 2.3 The new CFP regulation amends and repeals a number of regulations, decisions and directives in order to adapt them to the new rules it sets out.
- 2.4 One of these, and the reason for this opinion, is set out in Article 15 on measures for the conservation and sustainable exploitation of biological marine resources, which refers to the landing obligation.
- 2.5 This one aspect of the rules on the landing obligation, set out in the new Regulation (EU) No 1380/2013, requires seven pre-existing EC regulations to be amended and an eighth regulation to be repealed.

3. General considerations

- 3.1 The handling of the CFP reform set out in Regulation (EU) No 1380/2013 took far longer than originally expected, so much so that its entry into force had to be delayed by a year, mainly as a consequence of the controversial establishment of the landing obligation, also known as the discards ban.
- 3.2 It could be said that the main objective of the new CFP is the progressive elimination of discards in all EU fisheries through the introduction of a landing obligation.
- 3.3 In point 1.8 of the conclusion of its opinion on the CFP reform, the EESC welcomed the ban on discards, but advocated a "more gradual and proportionate approach, based on progressively reducing discards, promoting and encouraging more selective fishing gear, implementing measures designed to process fisheries products in a manner that offers added value, searching for market outlets and adapting the infrastructure of vessels and fishing ports".
- 3.4 In this regard, it is worth noting that the proposed basic CFP regulation introduced a discards ban which, depending on the species, will come into force between 1 January 2014 and 31 December 2015.
- 3.5 The European Parliament and the Council reached a political agreement at the end of 2013, setting out a new timetable for the landing obligation's entry into force, based on a more gradual application than originally planned, i.e. extending from 1 January 2015 to 1 January 2019.
- 3.6 In order to make the landing obligation operational, certain provisions within the current regulations on technical measures, management measures and control that run contrary to the landing obligation and oblige fishing operators to discard must be removed or amended.
- 3.7 The Council has urged the Commission to act swiftly to make changes to the existing regulations. The Commission intends to develop a new technical measures framework to facilitate the full implementation of the landing obligation as envisaged. However, this new framework will almost certainly not be in place in time for the first group of fisheries to be covered under the landing obligation on 1 January 2015.

- 3.8 Therefore legislation is required to remove any legal and practical impediments to implementation on a transitional basis while this new framework is being developed.
- 3.9 These new rules, which the EESC considers essential to the proper implementation of the new CFP, are the ones which the Commission has now put forward and which are analysed in the following points.

4. General comments

- 4.1 The proposal starts by introducing a number of changes to definitions that apply to various regulations, such as the introduction of the term "unintended catches" or the replacement of "minimum landing sizes (MLS)" with "minimum conservation reference sizes (MCRS)".
- 4.2 Most changes to the regulations on technical measures seek to abolish the current discard obligation in three cases:
- non-compliance with catch composition rules;
 - below MLS; and
 - non-compliance with bycatch provisions.
- 4.3 The Commission intends to retain the discard obligation for all catches which are not subject to the landing obligation and to remove, by means of derogations, catches that will be subject to the landing obligation and which, moreover, will count against quotas.
- 4.4 The EESC believes that technical measures are fundamental to fishing activities and that, for this reason, any related decisions should be taken following direct contact with ports; they should be specific to concrete cases, timely and based on fast-track and efficient decision-making processes that can be adapted to changing circumstances and developments concerning the relevant species. Regrettably, the EU decision-making process does not lend itself to this approach.

- 4.5 The EESC believes that the proposal for a regulation is extremely complicated and will generate an undue and disproportionate amount of additional work for fishing operators when it comes to applying the landing obligation. As a result, it advocates more pragmatic, clear, straightforward and flexible rules that give fishing operators a transitional period during which to adapt, as has occurred in other countries in the world, without facing heavy penalties. This is why it can see no justification for the new control measures introduced to ensure total and immediate "day-one" compliance with rules for which there is no prior experience.
- 4.6 The EESC therefore regrets that a prior impact assessment was not carried out in order to study the repercussions of the landing obligation for each fleet. In particular, considers this exercise to be especially necessary for pelagic fisheries taking place in fishing grounds outside the EU under the management of regional fisheries organisations (RFOs), where a thorough prior assessment is needed in order to harmonise implementation of EU legislation, taking into account the regulations already applicable to these RFOs, to ensure that no comparative disadvantage or threat is caused to the competitiveness of European fleets operating in fishing grounds outside the EU.

5. Specific comments

- 5.1 With regard to the definition of "unintended catches", i.e. incidental catches of marine organisms the fishing for which is prohibited in the relevant circumstances, the EESC believes that the definition is straightforward but unsatisfactory insofar as this usually concerns the unavoidable bycatch of valuable non-target species, which due to the distribution of quotas or other rules cannot be caught with that type of gear or by that particular operator. The EESC believes that it would be better to define them as "incidental catches that do not fully comply with the legislation in force".

- 5.2 With regard to the definition of "minimum conservation reference sizes", for the moment this is just a change in terminology to ensure the separate and monitored landing of species below this size and subject to the landing obligation, in order to make sure that they do not enter the distribution chain, whereas species that are not subject to the landing obligation will be thrown back into the sea. The EESC believes that margins of error need to be taken into consideration in order to cover the technical difficulties involved in the exhaustive separation of the various MCRS from among species subject to the landing obligation, otherwise it will create considerable legal uncertainty.
- 5.3 The amendment to the catch composition rules, which now require species subject to the landing obligation to be brought ashore, does not make it clear in certain cases whether these unintended catches should be included in the composition percentages. The EESC therefore considers that this creates a problem when it comes to identifying the quotas against which these catches should be counted, which is very difficult to establish without knowing how much flexibility the various measures envisaged will provide; how quota swaps between Member States will work in the future; and what policy the Commission will adopt when setting the TACs for the various species in mixed fisheries. If the criterion is the maximum sustainable yield, imbalances will be created which will lead to a widespread shortage for specific quotas and could be the ruin of many fisheries.
- 5.4 The recording of catches and discards
- 5.4.1 Following the amendment to Article 14(1) of Council Regulation (EC) No 1224/2009 on the completion and submission of fishing logbooks, the criterion "above 50 kg of live-weight equivalent" is removed from the previous wording: "indicating specifically all quantities of each species caught and kept on board above 50 kg of live-weight equivalent". The EESC believes that this measure will significantly complicate work, especially for small vessels, even though this chapter only applies to vessels over 10 metres long. If the intention is to improve data, this could be done by sampling.
- 5.4.2 Similarly, the EESC believes that the amendment to f), which now reads as follows "including, as a separate entry, the quantities or individuals below the applicable minimum conservation reference size", could also involve a disproportionate amount of work, especially for the small-scale fleet.

- 5.4.3 Paragraph 4 provided that "masters of Community fishing vessels shall also record in their fishing logbook all estimated discards above 50 kg of live-weight equivalent in volume for any species". The EESC believes that removing the reference to 50 kg will also create a considerable amount of work which has not even been estimated. It should be noted that the proposal refers to all species, irrespective of whether they are subject to the landing obligation or not.
- 5.5 The EESC is particularly struck by the control requirement for masters under Article 15(3) of Council Regulation (EC) No 850/98 since it is impossible to predict what a vessel will catch on a trip and masters cannot be required to acquire divination skills. Although the wording is unclear about the practical consequences of this requirement and about non-compliance, it could potentially be used to impose penalties against masters or to exacerbate disputes. As a consequence, the EESC believes that this point should be removed because it could create a serious degree of legal uncertainty.
- 5.6 The EESC believes that compulsory individual fishing authorisations for the vessels concerned by the landing obligation seems excessive since it would affect a large number of small vessels and generate considerable red tape, bearing in mind the additional reporting obligations for Member States. The EESC believes that it would be better to exempt vessels that go on trips of less than a day.
- 5.7 Other additional control obligations
- 5.7.1 The new control measures will apply to all fisheries and to large and small vessels. The EESC reiterates that these measures are unsuited to small vessels since they will involve considerable red tape for the industry and the authorities and practical difficulties for work on board.
- 5.7.2 The Commission has suggested the separate stowage of small species, stating that they should "be placed in boxes, compartments or containers separately for each stock". The EESC believes that this measure may prove impracticable for small vessels and that the partial exemption provided for vessels of less than 12 metres does not seem adequate. The EESC therefore believes that at least all vessels that go on trips of one or two days should be exempt from this requirement, irrespective of their size.

5.8 Penalties and observers

5.8.1 The suggested wording for Article 90(1)(c) of Council Regulation (EC) No 1224/2009 treats any failure to comply with the landing obligation as a serious infringement. The EESC considers this provision to be exaggerated and disproportionate and should be withdrawn from the proposal.

5.8.2 Although the same article states that the gravity of the infringement is to be determined by the competent authority of the Member State concerned, the EESC believes that the rules will prove so complex and difficult to implement that it will not be easy for the masters of any fleet to steer clear of involuntary minor infringements.

5.9 The EESC considers it reasonable to establish wider margins of tolerance for small catches. Nevertheless, it finds the proposed margins to be unrealistic, especially following the removal of the 50 kg limit from declarations and the requirement to record the volume of all discards. As an alternative, it suggests that the new margins of tolerance and these reporting requirements should be negotiated and discussed individually with each fishery.

5.10 According to the Commission, the inclusion of a section on remote electronic monitoring (CCTV), although not a requirement at present, meets the need for a regulatory framework for this system, which would be additional to those currently available under the control regulation. The EESC believes that the conditions that can reasonably be required need to be well defined and clearly delimited.

Brussels, 29 April 2014.

The President
of the
European Economic and Social Committee

Henri Malosse
