

Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on certain measures in relation to countries allowing non-sustainable fishing for the purpose of the conservation of fish stocks'

COM(2011) 888 final — 2011/0434 (COD)

(2012/C 229/21)

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On 17 January 2012 and 19 January 2012 respectively, the European Parliament and the Council decided to consult the European Economic and Social Committee, under Article 43 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council on certain measures in relation to countries allowing non-sustainable fishing for the purpose of the conservation of fish stocks

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The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on this subject, adopted its opinion on 11 May 2012.

At its 481st plenary session, held on 23 and 24 May 2012 (meeting of 23 May 2012), the European Economic and Social Committee adopted the following opinion by 149 votes, with 11 abstentions.

1. Conclusions

1.1 The EESC fully endorses the proposal for a Regulation. It commends the Commission for its decision to submit the proposal and calls for it to be strictly implemented.

1.2 The EESC believes that the countries allowing non-sustainable fishing are clearly defined. However, it considers that the condition set down in the second paragraph of Article 3(1)(b) should state 'lead to fishing activities which would lead the stock below the levels that can produce maximum sustainable yield, **or prevent the stock from reaching those levels**'.

2. Background

2.1 The United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) and the United Nations Agreement for the Implementation of the Provisions of the UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995, known as the UN Fish Stocks Agreement, require the cooperation of all the countries whose fleets exploit that stock.

2.2 Cooperation may be established in the framework of regional fisheries management organisations (RFMOs).

2.3 Where RFMOs have no competence for the stock in question, cooperation may be established by means of ad-hoc arrangements among the countries having an interest in the fishery.

3. Introduction

3.1 The proposal for a Regulation is aimed at third countries which, having an interest in a fishery involving stocks of

common interest to that country and the Union, conduct, without due regard to existing fishing patterns and/or the rights, duties and interests of other States and those of the Union, fisheries activities that jeopardise the sustainability of the stock, failing to cooperate with the Union in its management.

3.2 In order to promote the contribution of those countries to the conservation of the stock, the proposal sets down the specific measures to be adopted by the Union.

3.3 The framework for the adoption of these measures is established with the aim of ensuring long-term sustainability of fish stocks of common interest between the European Union and those third countries.

3.4 When it comes to implementing these measures, the proposal defines the conditions under which a country can allow non-sustainable fishing, the right to be heard and the opportunity to adopt corrective action, evaluation of the expected environmental, trade, economic and social effects, and the swift cessation of these measures once the country has adopted the necessary measures to contribute to the conservation of the stock of common interest.

3.5 The EU being a lucrative market of destination for fisheries products, it has a particular responsibility in ensuring that these countries' obligation of cooperation is respected, and the proposal therefore sets down swift, effective measures against States responsible for measures and practices that lead to over-exploitation of stocks.

3.6 To this end, it proposes restricting imports of fish products caught by vessels conducting fisheries on a stock of common interest under the responsibility of a country allowing

non-sustainable fishing and proposes restricting the provision of port services to those vessels, except in cases of imperative urgency. It also proposes avoiding that Union fishing vessels or Union fishing equipment be used for fishing the stock of common interest under the responsibility of the country allowing non-sustainable fishing.

3.7 The proposal defines the type of measures that may be taken and establishes general conditions for their adoption, so they are based on objective criteria, equitable, cost-effective and compatible with international law, in particular the Agreement establishing the World Trade Organisation.

3.8 Moreover, in order to ensure effective and coherent Union action, it takes into account the measures set out in Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

3.9 Lastly, in order to ensure uniform conditions for the implementation of the Regulation, the Commission considers that implementing powers should be conferred upon it, and that these should be exercised by implementing acts providing for the examination procedure in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

3.10 For reasons of urgency, the decisions whether the measures would cease to apply should be adopted as immediately applicable implementing acts in accordance with the abovementioned Regulation.

3.11 The EESC fully endorses the measures for action set down in the proposal for a Regulation.

4. Analysis of the proposal and the Committee's observations

4.1 Subject matter and scope

4.1.1 The proposal for a Regulation lays down the framework for the adoption of certain measures regarding fisheries-related activities and policies by third countries with the aim of ensuring long-term sustainability of fish stocks of common interest between the European Union and those third countries.

4.1.2 Therefore, in accordance with the UNCLOS, it applies to any fish stocks whose long-term sustainability is of common interest between the European Union and those third countries and whose management is ensured through their joint action.

4.1.3 The measures adopted pursuant to the Regulation may apply in all cases where cooperation with the Union is required in the joint management of the stocks of common interest, including where that cooperation takes place in the context of an RFMO or similar body.

4.2 Countries allowing non-sustainable fishing

4.2.1 A third country may be identified as a country allowing non-sustainable fishing where:

4.2.1.1 it fails to cooperate with the Union in the management of a stock of common interest in full accordance with the provisions of the UNCLOS set out in point 2.1 hereof, and

4.2.1.2 it has failed to adopt any fishery management measures, or

4.2.1.3 it has adopted such measures without due regard to the rights, interests and duties of others including the European Union, and those fishery management measures lead to fishing activities which would lead the stock below the levels that can produce maximum sustainable yield, when considered in conjunction with measures taken by the Union either autonomously or in cooperation with other countries.

4.2.1.4 The stock levels that can produce maximum sustainable yield shall be determined on the basis of best available scientific advice.

4.2.2 The EESC believes that the countries allowing non-sustainable fishing are clearly defined. However, it considers that the condition set down in the second paragraph of Article 3(1)(b) should state 'lead to fishing activities which would lead the stock below the levels that can produce maximum sustainable yield, **or prevent the stock from reaching those levels**'.

4.3 Measures which may be adopted in respect to countries allowing non-sustainable fishing

4.3.1 The Commission may adopt, by means of implementing acts, the following measures in respect to these countries:

4.3.1.1 identify the countries allowing non-sustainable fishing;

4.3.1.2 identify, where necessary, the specific vessels or fleets to which certain measures apply;

4.3.1.3 impose quantitative restrictions on importation into the Union of fish and fishery products made of or containing such fish, from the stock of common interest and caught while

under the control of the country allowing non-sustainable fishing; this ban includes importation into the Union from any other country of fish or fishery products from the stock of common interest;

4.3.1.4 impose quantitative restrictions on importation into the Union of fish of any associated species, and fishery products made of or containing such fish, when caught under the conditions laid out in the previous point; moreover, the ban on importation of associated species caught while conducting fisheries on the stock of common interest by the country allowing non-sustainable fishing is extended to any other country;

4.3.1.5 impose restrictions on the use of Union ports by vessels flying the flag of the country allowing non-sustainable fishing that fish the stock of common interest and by vessels transporting fish and fishery products stemming from the stock of common interest that had been caught either by vessels flying the flag of the country allowing non-sustainable fishing or by vessels authorised by it while flying another flag; such restrictions shall not apply in cases of force majeure or distress within the meaning of the UNCLOS for services strictly necessary to remedy those situations;

4.3.1.6 prohibit the purchase by Union economic operators of any fishing vessel flying the flag of those countries;

4.3.1.7 prohibit Union fishing vessels from changing their flag to that of one of those countries;

4.3.1.8 prohibit Member States from authorising chartering agreements with economic operators from those countries;

4.3.1.9 prohibit the exportation to those countries of fishing vessels flying the flag of a Member State or of fishing equipment and supplies needed to fish on the stock of common interest;

4.3.1.10 prohibit private trade arrangements between nationals of a Member State and countries allowing non-sustainable fishing in order for a fishing vessel flying the flag of that Member State to use the fishing possibilities of such countries; and

4.3.1.11 prohibit joint fishing operations involving fishing vessels of a Member State and fishing vessels flying the flag of a country allowing non-sustainable fishing.

4.3.2 The Committee believes that together these measures must ensure that those countries allowing non-sustainable fishing stop doing so. Moreover, the Committee considers these measures to be the most effective that the EU can adopt. Therefore, while it congratulates the Commission on

its decision to submit this proposal for a Regulation, which broadens and develops the measures set down in the Regulation on illegal fishing, the Committee urges the Commission to ensure that it is strictly enforced and fairly monitored. The Committee also warns that, even if requests are made to the World Trade Organisation, there should be no question as to its continued application, for it is through this Regulation that the long-term sustainability of the fish stocks of common interest to the EU and third countries can be guaranteed.

4.4 *General requirements concerning the measures adopted pursuant to the proposal for a Regulation*

4.4.1 The general requirements are:

4.4.1.1 that the measures adopted are always related to the conservation of the stock of common interest, in conjunction with restrictions on fishing by Union vessels or on production or consumption within the Union applicable to fish, and fishery products made of or containing such fish, of the species for which measures have been adopted pursuant to the proposed Regulation; these restrictions, in the case of associated species, may apply only when these are caught while conducting fisheries on the stock of common interest;

4.4.1.2 that the measures adopted are compatible with the obligations imposed by international agreements to which the Union is a party and any other relevant norms of international law;

4.4.1.3 that the measures take into account measures already taken pursuant to Regulation (EC) No 1005/2008 on illegal fishing;

4.4.1.4 that the measures adopted do not discriminate between countries where the same conditions prevail, and do not constitute a disguised restriction on international trade; and

4.4.1.5 that on their adoption the Commission will evaluate the environmental, trade, economic and social effects of these measures.

4.4.1.6 The measures adopted must foresee an appropriate system for their enforcement by competent authorities.

4.4.2 The EESC deems these requirements logical, and therefore endorses them.

4.5 *Requirements prior to the adoption of measures*

4.5.1 When it is necessary to adopt measures in line with the proposal, the Commission will notify the country in question in advance, informing it of the reasons and describing

the measures that could be taken in accordance with the Regulation. Before measures are taken, the country will be given a reasonable opportunity to respond to the notification in writing and to remedy the situation.

4.6 *Implementation period for the measures*

4.6.1 The measures adopted will cease to apply upon adoption by the country in question of appropriate corrective measures that (a) have been agreed with the Union and, where applicable, other countries concerned, or (b) do not undermine the effect of measures taken by the EU either autonomously or in cooperation with other countries on the conservation of the fish stocks concerned.

4.6.2 The Commission will, by means of implementing acts, determine whether the conditions previously agreed with the

country have been complied with and, where necessary, decide that the corrective measures adopted cease to apply.

4.6.3 On duly justified imperative grounds of urgency relating to unforeseen economic or social disruption, the Commission will adopt immediately applicable implementing acts to decide that the measures adopted cease to apply.

4.6.4 To ensure that the Regulation is implemented correctly, the Commission will be assisted by a committee in accordance with Regulation (EU) No 182/2011 concerning mechanisms for control by the Member States.

4.6.5 The EESC endorses the planned means of ceasing adopted measures and considers that immediate implementation would be logical for reasons of urgency, particularly when it comes to developing countries.

Brussels, 23 May 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON
