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from: General Secretariat of the Council

to: Delegations

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

Subject: Proposal for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy (First reading)

Delegations will please find attached the changes that the "Agriculture and Fisheries" Council on 14 May 2013 agreed to make to the draft revised mandate¹ for the Presidency for finalising the negotiations on the above legislative proposal. Changes concern Articles 2(2), 5, 7a (new), 9, 10, 15, 16, 17, 34, 42a, 46a, 52(1), 58b (new) and Annex III.

The Council made a statement as contained in Annex II to this note.

¹ Doc. ST 7165/2/13 REV 2 PECHE 84 CODEC 499.

Common Fisheries Policy – Basic regulation

1. MSY – Maximum Sustainable Yield MSY

Article 2.2 Objectives

2. The Common Fisheries Policy shall apply the precautionary approach to fisheries management, and shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield.

In order to reach this objective of progressively restoring and maintaining populations of fish stocks at biomass levels capable of producing maximum sustainable yield, the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and on a progressive, incremental basis at the latest by 2020 for all stocks.

Article 16 (2) - see below

Article 42a – Principles and objectives of agreements on exchange and joint management

1. Where stocks of common interest are also exploited by third countries, the Union shall engage with those third countries with a view to ensuring that these stocks are managed in a sustainable manner consistent with this Regulation, in particular with the objective in Article 2 (2). Where no formal agreement is reached, the Union shall make every effort to reach common arrangements for fishing of such stocks with a view to making the sustainable management possible, in particular, concerning the objective in Article 2(2), thereby promoting a level playing field for EU operators.

2. In order to ensure a sustainable exploitation of stocks shared with third countries and to guarantee stability of the fishing operations of its fleets, the Union shall, in compliance with UNCLOS, endeavour to establish bilateral or multilateral agreements with third countries aiming at a joint management of stocks, including the establishment where appropriate of access to waters and resources and conditions for such access, harmonisation of conservation measures and exchange of fishing opportunities.

Article 58b (new)

The Commission shall report annually to the Council and the European Parliament on the progress on delivery of maximum sustainable yield and the situation of fish stocks, as early as possible following the adoption of the yearly [TAC and Quota regulation].

2. Definitions

Article 5 (4)

(4) ‘fishing vessel’ means any vessel equipped for commercial exploitation of marine biological resources or a blue fin tuna trap.

3. Protected Areas

Article 7 a (new) - Protected Areas

The Union shall, while taking due account of existing conservation areas, endeavour to develop and continue to give additional protection to biologically sensitive areas where there is clear evidence of heavy concentration of fish below minimum conservation size and spawning grounds. For this purpose, Member States may identify suitable areas and prepare, where appropriate, joint recommendations in accordance with Article 17(7).

4. Multi-annual Plans

Article 9 - Multi-annual Plans

1. Multiannual plans shall be adopted as a priority based on scientific, technical and economic advice, and shall contain conservation measures to restore and maintain fish stocks above levels capable of producing maximum sustainable yields in accordance with Article 2(2).

2. Where targets for attaining the maximum sustainable yield cannot be determined owing to insufficient data, the multiannual plans shall provide for measures based on the precautionary approach, ensuring at least a comparable degree of conservation of the relevant stocks.

3. Multiannual plans shall cover either:

(a) single species; or

(b) in the case of mixed fisheries or where the dynamics of stocks relate to one another, fisheries exploiting several stocks in a relevant geographical area, taking into account knowledge about the interactions between fish stocks, fisheries and marine ecosystems.

4. The measures to be included in multiannual plans, and the calendar for implementing them, shall be proportionate to the objectives and targets pursued and to the timeframe envisaged. Before measures are included in the multiannual plans account shall be taken of their likely economic and social impact.²

5. Multi Annual plans may contain specific conservation objectives and measures based on the ecosystem approach, to address the specific problems of mixed fisheries in relation to achieving the maximum sustainable yields for the mixture of stocks covered by the plan in cases where scientific advice indicates that increases in selectivity cannot be achieved. Where necessary, the plan shall include specific alternative conservation measures for some of the stocks covered by the plan, based on the ecosystem approach.

Article 10 - Content of multiannual plan

1. A multiannual plan shall, as appropriate and without prejudice to the respective competencies under the Treaty, include:

(a) the scope, in terms of stocks, fishery and the area to which the multiannual plan shall be applied;

(b) objectives that are consistent with objectives set out in Article 2 and with the relevant provisions of Articles -7 and 9;

² *Open to incorporating the aspect of proportionality, gradual implementation and impact assessment. Consider incorporating those aspects into para (1).*

- (c) quantifiable targets such as fishing mortality rates and/or spawning stock biomass;
 - (d) clear time frames to reach the quantifiable targets;
 - (e) conservation reference points consistent with the objectives in Article 2;
 - (f) objectives for conservation and technical measures to be taken in order to achieve the targets set out in Article 15 and measures designed to avoid and as far as possible reduce unwanted catches;
 - (g) safeguards to ensure that quantifiable targets are met, and remedial action where needed, including for situations where deteriorating data availability or quality put the sustainability of the stock at risk.
2. A multiannual plan may also include:
- (a) other conservation measures, in particular measures to gradually eliminate discards taking into account the best available scientific advice or to minimise the negative impact of fishing on the ecosystem, to be detailed, where appropriate, in accordance with Title III;
 - (b) where appropriate, specific objectives for the freshwater part of the life cycle of anadromous and catadromous species;
 - (c) quantifiable indicators for periodic monitoring and assessment of the progress related to achieving the targets of the multiannual plan.
3. A multiannual plan shall provide for its revision after an initial ex-post evaluation, in particular to take account of changes in the scientific advice.

5. Discards/obligation to land

Article 15 - Obligation to land all catches

1. All catches subject to catch limits, and in the Mediterranean also catches subject to minimum landing sizes as defined in the Annex to Regulation (EC) No. 1967/2006, caught during fishing activities in Union waters or by Union fishing vessels outside Union waters in waters not subject to third countries' sovereignty or jurisdiction, in the fisheries and geographical areas listed below shall be brought and retained on board the fishing vessels, recorded, landed, and counted against the quotas where applicable, except when used as live bait, in accordance with the following timeframe:

(a) At the latest from 1 January 2015:

- small pelagic fisheries i.e. fisheries for mackerel, herring, horse mackerel, blue whiting, boarfish, anchovy, argentine, sardine, sprat;
- large pelagic fisheries i.e. fisheries for bluefin tuna, swordfish, albacore tuna, bigeye tuna, blue and white marlin;
- fisheries for industrial purposes i.a. fisheries for capelin, sandeel and Norway pout;
- salmon in the Baltic Sea.

(b) At the latest from 1 January 2015 for species defining the fisheries and not later than 1 January 2017 for all other species in:

- fisheries in Union waters of the Baltic Sea for species subject to catch limits other than those covered by point (a).

(c) At the latest from 1 January 2016 for species defining the fisheries and not later than 1 January 2019 for all other species in:

(i) The North Sea

- fisheries for cod, haddock, whiting, saithe;
- fisheries for Norway lobster;
- fisheries for common sole and plaice;
- fisheries for hake;
- fisheries for Northern prawn;

(ii) North Western Waters

- fisheries for cod, haddock, whiting, saithe;
- fisheries for Norway lobster;
- fisheries for common sole and plaice;
- fisheries for hake;

(iii) South Western Waters

- fisheries for Norway lobster;
- fisheries for common sole and plaice;
- fisheries for hake;

(iv) other fisheries for species subject to catch limits.

(d) At the latest from 1 January 2017 for species defining the fisheries and not later than 1 January 2019 for all other species in fisheries not covered by paragraph 1(a) in the Mediterranean, in the Black Sea and in all other Union waters and in non-Union waters not subject to third countries' sovereignty or jurisdiction.

1bis. Paragraph 1 shall be without prejudice to international obligations that are binding on the Union. The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 55, measures for the purpose of implementing such international obligations into Union law, including, in particular, derogations from the landing obligation under this Article.

1ter. Where all the Member States with a direct management interest in a particular fishery agree that the landing obligation should apply to species other than those defined in paragraph 1, they may submit a joint recommendation for the purpose of extending the application of the landing obligation under paragraph 1 to such other species. For this purpose, Article 17(1)-(6) shall apply *mutatis mutandis*. Where such joint recommendation is submitted, the Commission may adopt these measures by means of delegated acts in accordance with Article 55.

2. The following shall be exempted from the landing obligation laid down in paragraph 1:

- (a) Species in respect of which fishing is prohibited and that are identified as such in a Union act adopted in the area of the Common Fisheries Policy;
- (b) Species for which scientific evidence demonstrates high survival rates, taking into account the characteristics of the gear, of the fishing practices and of the ecosystem;
- (c) Catches falling under *de minimis* exemptions.

3. Details of the implementation of the obligation to land catches from fisheries in paragraph 1 shall be specified in multiannual plans referred to in Articles 9 and 10 and where relevant specified in accordance with Title III, including:

- (a) specific provisions regarding fisheries or species covered by the obligation to land all catches of regulated species as set out in paragraph 1 of this Article;
- (b) specification of exemptions to the landing obligation for species mentioned in paragraph 2 point (b) of this Article;
- (c) Provisions for *de minimis* exemptions of up to 5% of total annual catches of all species subject to an obligation to land as set out in paragraph 1. The *de minimis* exemption shall apply in the following situations:
 - (i) where scientific evidence indicates that increases in selectivity are very difficult to achieve; or

- (ii) to avoid disproportionate costs of handling unwanted catches, for those fishing gears where unwanted catches per fishing gear do not represent more than a certain percentage, to be established in the plan, of total annual catch of that gear.

Catches under this provision shall not be counted against the relevant quotas. However, all such catches shall be fully recorded.

For a transitional period of four years, the percentage of the total annual catches referred to in subparagraph (c) shall increase: (i) by two per cent in the first two years of application of the landing obligation; and (ii) by one per cent in the subsequent two years.

(d) provisions on documentation of catches;

(e) fixing of minimum conservation reference sizes, where appropriate, in accordance with paragraph 5.

3a. Where no multiannual plan or no management plan in accordance with Article 18 of Regulation (EC) No 1967/2006 for the fishery in question is adopted, the Commission may adopt a specific discards plan on a temporary basis under the rules stipulated under Article 17. Member States may cooperate in accordance with Article 17 with a view to the Commission adopting a specific plan, for no more than a 3 year period, on the landing obligation and specifications in paragraph 3 (a)-(e), by means of delegated acts in accordance with the procedure in Article 55, or in the ordinary legislative procedure.

3b. Where no measures have been adopted, either in a multiannual plan adopted in accordance with paragraph 3, or in a specific discard plan adopted in accordance with paragraph 3a, for the purpose of specifying the *de minimis* exemption referred to in paragraph 2(c), the Commission shall adopt, by means of delegated acts in accordance with Article 55, a *de minimis* exemption that shall, subject to the conditions set out in paragraph 3(c)(i) or (ii), amount to no more than 5% of total annual catches of all species to which the landing obligation applies under paragraph 1. This *de minimis* exemption shall be adopted so as to apply from the date of application of the relevant landing obligation.

4.(a) As a derogation from the obligation to count catches against the relevant quotas in accordance with paragraph 1, catches of species that are subject to an obligation to land and that are caught in excess of quotas of the stocks in question, or catches of species in respect of which the Member State has no quota, may be deducted from the quota of the target species provided that they do not exceed 9 % of the quota of the target species. This provision shall only apply where the stock of the non-target species is within safe biological limits.

(b) For stocks subject to a landing obligation, Member States may use a year-to-year flexibility of up to 10% of their permitted landings. For this purpose, a Member State may allow landing of additional quantities of the stock that is subject to the landing obligation provided that such quantities do not exceed 10% of the quota allocated to that Member State. Article 105 of the Control Regulation shall apply.³

5. With the aim to ensure the protection of juveniles of marine organisms, minimum conservation reference sizes may be established.

6. For the species subject to an obligation to land as specified in paragraph 1, the use of catches of species below the minimum conservation reference size shall be restricted to purposes other than direct human consumption, including fish meal, fish oil, pet food, food additives, pharmaceuticals and cosmetics.

7. For the species not subject to an obligation to land as mentioned in paragraph 1, the catches of species below the minimum conservation reference size shall not be retained on board, but shall immediately be returned to the sea.

8. Member States shall ensure detailed and accurate documentation of all fishing trips and adequate capacity and means for the purpose of monitoring compliance with the obligation to land all catches, inter alia such means as observers, CCTV and other. In doing so, Member States shall respect the principle of efficiency and proportionality.

³ Please note that under Article 57(6) of this Regulation, a consequential amendment to Article 105 of the Control Regulation would be adopted according to which no multiplying factor would apply to overfishing of up to 10%.

6. Fishing Opportunities

Article 16 – Fishing Opportunities

1. Fishing opportunities allocated to Member States shall ensure each Member State relative stability of fishing activities for each fish stock or fishery. The interests of each Member State shall be taken into account when new fishing opportunities are allocated.

1bis. When a landing obligation for a fish stock is being introduced, fishing opportunities shall be set taking account of the change from setting fishing opportunities to reflect landings to setting fishing opportunities to reflect catches on the basis that for the first and subsequent years, discarding of that stock will no longer be allowed.

1ter. Where new scientific evidence shows that fishing opportunities that have been fixed for a specific stock are in significant disparity with the actual state of that stock, those Member States with a direct interest may submit a reasoned request to the Commission to submit a proposal to alleviate this disparity while respecting the objectives set out in Article 2(2).

2. Fishing opportunities shall be established consistent with the objectives set down in Article 2(2) and comply with quantifiable targets, time frames and margins established in accordance with Article 9(2) and points (b) and (c) of Article 10(1)⁴.

3. Each Member State shall decide how fishing opportunities assigned to it in accordance with Article 16, and which are not subject to a system of transferable fishing concessions, may be allocated to vessels flying its flag, for example by creating individual fishing opportunities. It shall inform the Commission of the allocation method.

4. For the allocation of fishing opportunities pertaining to mixed fisheries, Member States shall take account of the likely catch composition of vessels participating in such fisheries.

5. Fishing opportunities available to third countries in Union waters shall be established and allocated to those third countries.

⁴ Article 11(1) according to numbering of the Articles in the proposal.

6. Member States may, after notifying the Commission, exchange all or part of the fishing opportunities allocated to them.

7. **Regionalisation**

Article 17 - Regional cooperation on conservation measures including multiannual plans, measures in accordance with Article 12 and specific plans for the obligation to land catches

1. Where, in respect of a conservation measure applying to a relevant geographical area, including in a multiannual plan established pursuant to Articles 9 and 10, measures in accordance with Article 12 and specific plans for the obligation to land catches, the Commission is granted powers to adopt measures by means of delegated or implementing acts, Member States having a direct management interest affected by these measures (“Member States concerned”) may, within a deadline to be stipulated in the relevant conservation measure and/or multiannual plan, agree to submit joint recommendations aiming at achieving the objectives of the relevant Union conservation measures and/or multiannual plans and/or specific plans for the obligation to land catches to be adopted in accordance with Article 15. The Commission shall not adopt any such delegated or implementing acts before the expiry of the deadline for submission of joint recommendations by the Member States.

2. For the purpose of paragraph 1, Member States concerned shall cooperate with one another in formulating joint recommendations. They shall also consult the relevant Advisory Council(s). The Commission shall facilitate the cooperation between Member States, including, where necessary, ensuring that a scientific contribution can be obtained from relevant scientific bodies.

3. Where joint recommendations on measures are submitted under paragraph 1, the Commission shall be empowered to adopt these measures by means of delegated or implementing acts, provided that such recommendations are compatible with the relevant conservation measure and/or multiannual plan.

4. Where the conservation measure applies to a specific fish stock shared with third countries and managed by multilateral fisheries organisations or under bilateral and multilateral agreements, the Union shall endeavour to agree with the relevant partners the necessary measures to achieve the objectives set out in Article 2.

5. Member States shall ensure that joint recommendations on conservation measures to be adopted pursuant to paragraph 1 are based on the best available scientific advice and:

- (a) are compatible with the objectives set out in Article 2;
- (b) are compatible with the scope and objectives of the Union conservation measure;
- (c) are compatible with the scope and meet the objectives and quantifiable targets set out in a relevant multiannual plan effectively; and
- (d) are no less stringent than those existing in Union legislation.

6. If not all Member States succeed in agreeing on joint recommendations to be submitted to the Commission according to paragraph 1 within the deadline set or if the joint recommendations on conservation measures are deemed not to be compatible with the objectives and quantifiable targets of the conservation measures in question, the Commission may submit a proposal under the ordinary legislative procedure, or, where relevant, in accordance with the procedure under Article 43(3) of the Treaty.

7. In addition to cases referred to in paragraph 1, Member States having a direct management interest in fish stocks in a geographically defined area may also prepare common joint recommendations on measures to be adopted under the ordinary legislative procedure by the European Parliament and the Council, or, where relevant, in accordance with the procedure under Article 43(3) of the Treaty or in accordance with the procedures in Articles 55 and 56.

8. As a supplementary or alternative method of regional cooperation, Member States will be empowered in a Union conservation measure that applies to a relevant geographical area, including in a multiannual plan established pursuant to Articles 9 and 10, to adopt within a set deadline measures further specifying that conservation measure. The Member States concerned shall closely cooperate in the adoption of such measures. Paragraphs 2, 4 and 5 shall apply *mutatis mutandis*. The Commission shall be associated and its comments shall be taken into account. The Member State concerned shall only adopt their respective national measures if an agreement on the content of the measures was reached by all the Member States concerned. Where the Commission considers a Member State measure does not comply with the conditions set out in the relevant conservation measure, it may, subject to providing relevant reasons, request that the Member State(s) concerned amend or repeal the relevant measure.

8. Fishing Capacity

Article 34 – Adjustment and Management of Fishing Capacity

1. Member States shall put in place measures to adjust the fishing capacity of their fleets to their prospective fishing opportunities, with the objective of achieving a stable and enduring balance between them.

1a. In order to achieve the objective referred to in paragraph 1, Member States shall send to the Commission by 31 May of each year a report on the balance. The report shall contain the annual capacity assessment of the national fleet and of all fleet segments of the Member State. The report shall seek to identify structural overcapacity by segment and estimate the long-term profitability by segment. The report shall be made publicly available.

1b. With regard to the assessments referred to in paragraph 2, Member States shall base their analysis on the balance between the fishing capacity of their fleets and the prospective fishing opportunities. Separate assessments shall be drawn up for fleets operating in the outermost regions and for vessels operating exclusively outside Union waters. To facilitate a common approach across the Union, the Commission may develop guidelines indicating the relevant technical, social and economic parameters.

2. If the assessment clearly demonstrates that the fishing capacity is not effectively balanced with fishing opportunities, the Member State shall prepare and include in the report an action plan for the fleet segments with clearly identified significant overcapacity. The action plan shall set out the adjustment targets and tools to achieve the balance and a clear time frame for the implementation of the plan. On a yearly basis, the Commission shall prepare a report for the European Parliament and the Council on the balance between the fishing capacity of the Member State fleets and their prospective fishing opportunities in accordance with the guidelines referred to in paragraph 1b. The report shall include action plans in accordance with this paragraph. The first report shall be submitted by 31 March 2015.

Failure to undertake the report as referred to in paragraph 1a, and failure to implement the action plan as referred to in the previous subparagraph, may result in a proportionate suspension or interruption of relevant Union financial assistance to that Member State for investment in the fleet segment or segments concerned in accordance with the provisions of the EMFF Regulation.

3. No exit from the fleet supported by public aid shall be permitted unless preceded by the withdrawal of the fishing licence and the fishing authorisations.

4. The fishing capacity corresponding to the fishing vessels withdrawn with public aid shall not be replaced.

5. Member States shall ensure that from the entry into force of this Regulation the fishing capacity of their fleet does not exceed at any time the fishing capacity ceilings set out in Annex II.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 55 concerning the re-calculation of the fishing capacity ceilings as referred to in paragraph 5.

9. Expert Group on Compliance

Article 46a - Expert Group on compliance

1. An Expert group on compliance shall be established by the Commission to assess, facilitate and strengthen the implementation of, and compliance with, the obligations under the Union fisheries control system.
2. The Expert Group on compliance shall be composed of representatives of the Commission and the Member States. The European Fisheries Control Agency may assist the Expert group on compliance meetings as an observer.
3. The Expert Group shall in particular:
 - a) review regularly issues of compliance and implementation under the Union fisheries control system and identify possible difficulties of common interest in implementing CFP rules;
 - b) formulate advice in relation to the implementation of CFP rules, including prioritization of EU financial assistance; and
 - c) exchange information on control and inspection activities, including the fight against IUU fishing.
4. The European Parliament and the Council shall be informed on a regular basis by the Expert group on compliance activities referred to in paragraph 3.

10. AC's Composition

Article 52(1) and table in Annex III

A Markets Advisory Council shall be established.

The Advisory Council for the outermost regions shall be divided into three sea basins: West Atlantic, East Atlantic, Indian Ocean.

Annex 3 point 2a – Functioning and Funding

In the general assembly and executive committee, 60% of the seats shall be allotted to organisations representing the fisheries and, where appropriate, aquaculture operators, and representatives of the processing and marketing sectors, and 40% to representatives of the other interest groups affected by the Common Fisheries Policy, for example environmental organisations and consumer groups.

Council Statement on multi-annual plans

The Council is committed to working with the European Parliament and the Commission to address inter-institutional issues and agree a way forward that respects the legal position of both the Parliament and the Council to facilitate the development and introduction of multi-annual plans on a priority basis under the terms of the Common Fisheries Policy.

The Council further proposes that an inter-institutional taskforce be established to help find the most appropriate way forward.
