



EUROPEAN PARLIAMENT

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*Committee on Legal Affairs
The Chair*

29.10.2010

Ms Carmen Fraga Estévez
Chair
Committee on Fisheries
BRUSSELS

Subject: Opinion on the legal basis of the on the Proposal for a Council Decision laying down rules for the imports into the European Union from Greenland of fishery products, live bivalve molluscs, echinoderms, tunicates, marine gastropods and by-products thereof (COM(2010)0176 – C7-0136/2010 – 2010/0097(CNS))

Dear Madam Chair,

On 26 April 2010, Parliament was consulted on the above-mentioned proposal by the Council under the consultation procedure provided for in Article 203 TFEU. The proposal is now under consideration in the Committee on Fisheries where you, as Chair, were appointed rapporteur.

On 6 October 2010, the Committee on Legal Affairs was asked to draw up an opinion on the proposal's legal basis pursuant to Rule 37(2) of the European Parliament's Rules of Procedure. Your committee argues that the act in question should be adopted under the ordinary legislative procedure, suggesting as its legal basis Articles 43(2) and 204 TFEU and the Sole Article of the Protocol (No 34) on Special Arrangements for Greenland.

I. Background

Greenland, a former Danish colony, became a part of the European Economic Community when Denmark joined the EEC in 1973. However, as a result of the fast growing modernisation of Greenlandic society and demands for greater economic and political

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independence from Denmark, Greenland formally withdrew from the EEC in 1985.

Greenland continued however to be associated with the European Union as one of the overseas countries and territories and was therefore subject to ex Articles 131 to 136 of the Treaty establishing the EEC (now Articles 198 to 203 TFEU). The Treaty on Greenland's withdrawal from the Community set up a special regime providing a fisheries agreement whereby the European Union maintains its fishing rights and Greenland maintains its financial support. Protocol No 34 on special arrangements for Greenland was also annexed to the EEC Treaty to provide for the arrangements concerning the import into the Union of products originating in Greenland subject to the common organisation of the market in fishery product.

II. Proposed Legal Basis

Article 203 TFEU¹

The Council, acting unanimously on a proposal from the Commission, shall, on the basis of the experience acquired under the association of the countries and territories with the Union and of the principles set out in the Treaties, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the Union. Where the provisions in question are adopted by the Council in accordance with a special legislative procedure, it shall act unanimously on a proposal from the Commission and after consulting the European Parliament.

Article 204 TFEU

The provisions of Articles 198 to 203 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to the Treaties.

PROTOCOL (No 34) ON SPECIAL ARRANGEMENTS FOR GREENLAND

Sole Article

1. The treatment on import into the Union of products subject to the common organisation of the market in fishery products, originating in Greenland, shall, while complying with the mechanisms of the internal market organisation, involve exemption from customs duties and charges having equivalent effect and the absence of quantitative restrictions or measures having equivalent effect if the possibilities for access to

¹ Emphasis supplied.

Greenland fishing zones granted to the Union pursuant to an agreement between the Union and the authority responsible for Greenland are satisfactory to the Union.

2. All measures relating to the import arrangements for such products, including those relating to the adoption of such measures, shall be adopted in accordance with the procedure laid down in Article 43 of the Treaty [on the functioning of] the European Union.

Article 43 TFEU

1. ...

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.

3. The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

4. ...

5. ...

III. Case-law on legal basis

It is settled case law of the Court of Justice that "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure"¹. The choice of an incorrect legal basis may therefore justify the annulment of the act in question.

IV. Aim and Content of the Proposal

Recitals 2, 3 and 7 of the proposed Decision state as follows:

(2) Denmark and Greenland have requested that trade between the Union and Greenland in fishery products, bivalve molluscs, echinoderms, tunicates, marine gastropods and by-products derived from

¹ Case C-45/86, *Commission v. Council* (Generalised Tariff Preferences) [1987] ECR 1439, para. 5; Case C-440/05 *Commission v. Council* [2007] E.C.R. I-9097; Case C-411/06 *Commission v. Parliament and Council* (8 September 2009) (OJ C 267, 7.11.2009, p.8).

those sources that are originating in Greenland according to the provisions of Annex III to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community be permitted in accordance with the rules on trade within the Union.

(3) It is appropriate that such trade be conducted in compliance with Union rules on animal health and food safety laid down in the legislation of the Union, in addition to the rules on the common organisation of the market in fishery products.

(7) To permit the importation into the European Union from Greenland of products in accordance with the rules laid down in Union legislation on trade within the Union, Denmark and Greenland should undertake to transpose and implement the relevant provisions in Greenland, before the date of adoption of this Decision.

Denmark and Greenland should undertake to ensure that imports into Greenland from third countries of the products concerned comply with Union rules on animal health and food safety. [...]

In addition, Articles 1 and 3 of the Proposal state as follows:

Article 1

Subject matter and scope

This Decision applies to fishery products, bivalve molluscs, echinoderms, tunicates and marine gastropods and to by-products derived from those sources ('the products'), originating from Greenland or introduced into Greenland and then introduced into the European Union.

Article 3

General rules concerning trade between the European Union and Greenland in fishery products, live bivalve molluscs, echinoderms, tunicates, marine gastropods and by-products thereof

1. Member States shall authorise imports into the European Union of the products coming from Greenland, in accordance with Union legislation on trade within the Union.

2. The importation of the products into the Union shall be subject to the following conditions:

a) the effective transposition and implementation in Greenland of the applicable rules laid down in Union legislation concerning animal health, food safety and the common organisation of the market in fishery

products, relating to the products ;

(b) ...

(c) the conformity of consignments of products dispatched to the European Union from Greenland with the applicable rules laid [down] in Union legislation concerning animal health, food safety and the common organisation of the market in fishery products;

(d) the correct application of the rules laid down in Union legislation concerning animal health and food safety and the common organisation of the market in fishery products, to introduction of the products into Greenland.

The purpose of the proposal is therefore to extend the application of the rules on trade within the Union to the imports of fishery products originating from Greenland or introduced into Greenland into the European Union. Such extension is however subject to the respect of EU rules on animal health and food safety and rules on the common organisation of the market in fishery product.

Article 2 of the proposal sets out definitions; Article 4 deals with monitoring plans; Article 5 regulates the required checks on products imported to Greenland from third countries; Articles 6 and 7 deals with information systems and identification marks in the trade of the products and Article 8 with confirmation of compliance with the conditions in the decision; Article 9 deals with implementing measures; Article 10 sets out a committee procedure; and Article 11 deals with entry into force and applicability.

V. Determination of the appropriate legal basis

According to Article 204 TFEU, the general provisions on overseas countries and territories in Articles 198 to 203 TFEU shall not be applied to Greenland where Protocol No 34 sets out specific provisions for Greenland. Indeed, since Greenland withdrew from the EEC, specific provisions and procedures in Protocol No 34 set out import arrangements for products which are subject to the common organisation of the market in fishery products. Such products are listed in Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the market in fishery and aquaculture products¹ and the products which are the subject of the proposed decision are listed therein.

Article 203 TFEU therefore cannot constitute the legal basis for a decision laying down rules for imports into the EU from Greenland of fishery products. A simple application of the principle of *lex specialis derogat generali* leads to the conclusion that the more specific provisions of Protocol No 34 must be applied when adopting such a decision, rather than the more general Article 203 TFEU which merely deals with the overall association of the countries and territories with the Union.

The second paragraph of the Sole Article of this Protocol provides that all measures relating

¹ OJ L 17, 21.1.2000, p. 22.

to the import arrangements for fishery products shall be adopted by the procedure laid down in Article 43 TFEU.

Since two distinct procedures are provided for in points 2 and 3 of Article 43 TFEU, the appropriate legal basis has to be narrowed down to one of those paragraphs. Point 2 sets out the procedure for the adoption of provisions necessary for the pursuit of the objectives of the common fisheries policy, whereas point 3 lays down the procedure for the adoption of measures fixing prices, levies, aid, quantitative limitations and allocating fishing opportunities.

The purpose of the proposed decision is to require Greenland to transpose EU health rules as a condition for the application of the EU internal market rules as regards fisheries to the imports of fishery products originating from Greenland, in particular by making sure that the rules of the agreement are in line with the applicable rules laid down in Union legislation concerning animal health, food safety and the common organisation of the market in fishery products, as specified in Article 3 of the proposal.

The proposal therefore pursues the objectives of the common fisheries policy, rather than adopting any of the measures listed in point 3 of Article 43 TFEU, and therefore point 2 of that article must be used as the legal basis for the proposal.

VI. Conclusion and recommendation

At its meeting of 28 October 2010 the Committee on Legal Affairs accordingly decided, unanimously¹, to recommend you as follows: Articles 43(2) and 204 TFEU and the Sole Article of the Protocol (No 34) on special arrangements for Greenland must form the legal basis for the proposed decision.

Yours sincerely,

Klaus-Heiner Lehne

¹ The following were present for the final vote: Raffaele Baldassarre (acting Chair), Sebastian Valentin Bodu (Vice-Chair), Eva Lichtenberger (rapporteur), Françoise Castex, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Daniel Hannan, Kurt Lechner, Bernhard Rapkay, Diana Wallis, Cecilia Wikström and Tadeusz Zwiefka .