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Sustainable management of external fishing fleets

Impact Assessment (SWD (2015) 276, SWD (2015) 279 (summary)) of a Commission proposal for a Regulation of the European Parliament and of the Council on the sustainable management of external fishing fleets, repealing Council Regulation (EC) No 1006/2008 (COM (2015)636)

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [Impact Assessment](#) (IA) accompanying its proposal on the sustainable management of external fishing fleets, repealing Council Regulation (EC) 1006/2008. The proposal, adopted on 10 December 2015, was referred to the Parliament's Committee on Fisheries.

The objective of the Common Fisheries Policies (CFP) is to ensure the economically, environmentally and socially sustainable exploitation of living aquatic resources and aquaculture. The CFP covers fishing activities carried out in Union waters, including by third country vessels, as well as those carried out outside Union waters by Union fishing vessels. The external dimension of the CFP aims to ensure that fishing activities follow the same principles and standards both inside and outside Community waters. As a consequence of the latest reform of the CFP enshrined in the Basic Regulation 1380/2013 (in effect since 1 January 2014), the corresponding changes need to be adequately reflected in the three implementing and complementary pillars of the CFP: namely, the Illegal, Unreported and Unregulated Fishing Regulation (IUU), the Control and the Fishing Authorisation Regulations. The present proposal¹ for a regulation on the sustainable management of external fishing fleets would replace Regulation 1006/2008 – the Fishing Authorisation Regulation (FAR). It aims to deal with authorisations of Union vessels to fish outside Union waters and authorisations granted to third country fishing vessels to operate in Union waters.

The present revision of the FAR is required in order to address the objectives of the new CFP. This revision is also 'a regulatory Fitness (REFIT) initiative aimed at clarifying and simplifying the current provisions, in particular in terms of responsibilities at Union, national and operator level, as well as bringing the Fishing Authorisation Regulation in line with the Control Regulation'². Revision of the FAR is also necessary as a result of several developments at international level³ that have clearly established the responsibilities of the flag state. The Commission proposed a revision of the FAR in its 2011 Communication on the external dimension of the CFP, which the Council supported in its Conclusions of 19 March 2012. In its resolution on the external dimension of

¹ [New rules for managing the EU external fishing fleet, Legislation in progress, Irina Popescu](#)

² Explanatory Memorandum of the proposal, p. 2.

³ The EU has endorsed both the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing (IPOA-IUU) and the FAO Voluntary Guidelines for flag state performance. The latter place the responsibility of ensuring long term conservation and sustainable use of living marine resources and of ecosystems on the flag state and recommend that the flag state sets up an authorisation regime. In April 2015, the International Tribunal of the Law of the Sea (ITLOS) declared the 'due diligence' obligation of the flag state to prevent IUU activities in third country waters and clarified that, in case of an EU vessel breaching bilateral EU fisheries agreements, the liability lies with the Union and not the Member States.

the CFP of November 2012⁴, the European Parliament supported a thorough reform of the FAR and called for the broadening of the scope of the CFP beyond bilateral agreements and Regional Fishing Management Organisations (RFMOs)⁵.

The EU external fleet is estimated at around 700 vessels, of which 250 to 300 operate within the framework of bilateral agreements (IA, p. 18). Despite a small number of vessels (which account for less than 1% of the EU total), the external fleet provides more than a quarter of the EU's total fishing catch (exceeding 90% for tuna and related species). A vast majority of the fleet fishes exclusively outside EU waters. The EU Member States that have a large external fleet are Spain, France, Portugal, Poland and the Netherlands⁶. With the exception of public fisheries agreements, the FAR 'does not allow for identifying and counting all Union vessels fishing in external waters. One of the aims of the proposal is precisely to change this and improve the monitoring of the Union's external fleet'⁷. Monitoring the activities of the EU fishing fleet, wherever they are, is crucial to promote sustainable fishing and combat illegal operations.⁸

Problem definition

While the provisions regarding the activities of non-EU vessels operating in Union waters do not seem to pose difficulties, the IA points to shortcomings in the provisions of the current FAR concerning the fishing activities of the fleets of the Member States outside Union waters: namely, it does not allow for efficient and transparent monitoring, control and surveillance of the EU external fleets. This is mainly due to confusing and imprecise provisions⁹ and unclear division of competences between the different levels of administrations involved, as well as shortcomings of certain rules. Failure to address these challenges could threaten the sustainable exploitation of fishing resources and also damage the reputation of the EU internationally.

In addition, the EU must be able to adhere to the FAO voluntary guidelines for the flag state concerning an authorization regime for fishing activities; thus, a vessel can only engage in fishing practices if it has been authorised by both the flag state and the third country where it operates according to procedures consistent with international law and sustainable management considerations.

The IA identifies four specific problems that need to be addressed:

1. Unclear and confusing provisions: According to the IA, there are inconsistencies with the Lisbon Treaty and other texts. While execution measures provided in the FAR need to be taken by the Commission, these measures do not fall within the remit of implementing and delegated acts as introduced by the TFEU and therefore need to be treated in a distinct manner – that is, by providing for a delegation of powers to the Commission with regard to the transmission of fishing authorisations and the reallocation of fishing opportunities¹⁰. In addition, the IA argues that definitions are confusing. Terms such as 'fishing vessel' and 'fishing activity' can differ in the FAR, Control and IUU Regulations, leading to inconsistencies and legal uncertainties; and concepts such as 'fishing licence' and 'fishing authorisation' are used interchangeably, leading to cases of unjustified attribution of fishing authorisations. Furthermore, the IA notes that there are unclear provisions for requests and issuing of fishing

⁴ [European Parliament resolution of 22 November 2012 on the external dimension of the Common Fisheries Policy \(2011/2318\(INI\)\)](#).

⁵ The EP called for the inclusion of fishing activities not currently covered, such as private agreements between EU companies and third countries and EU vessels temporarily reflagging to a third country to obtain new fishing opportunities.

⁶ IA Executive summary, p. 3.

⁷ Commission proposes [new rules](#) to improve transparency and monitoring of EU fleet fishing internationally.

⁸ For further information on the issue, see related EPRS briefings, notably:

- [New rules for managing the EU external fishing fleet, Legislation in progress, Irina Popescu](#)

- [Beyond the European seas: The external dimension of the Common Fisheries Policy, In-depth analysis, Irina Popescu](#), p.7 - [Council Regulation 1006/2008 on fishing authorisations, Implementation Appraisal, Lorna Schrefler](#)

⁹ IA, p.11.

¹⁰ IA, p.12.

authorisations (applicable to the framework of bilateral agreements and RFMOs) and for the management of such authorisations (applicable in the framework of bilateral agreements).

In relation to the former, the eligibility criteria are considered to be ill-defined and difficult to check. Despite some improvements (such as the introduction of an application form to request authorisations and some RFMOs' agreement of minimum information to authorise vessels' fishing activities), they are not reflected in the legislation, which could create an incoherence between obligations emanating from EU legislation and international norms. Moreover, there are no verification provisions or mechanisms to check that an operator introducing a request for a fishing authorisation has respected all the obligations related either to the transmission of data concerning catches and fishing effort or to the payment of fees. With regard to the management of fishing authorisations, there are operational uncertainties (Article 10 of the current Regulation) linked with fishing activities for the ship owners in the transitional period between the end of one protocol and the entry into force of the next. Moreover, current fishing reallocation rules lack clarity concerning the reallocation to one Member State of fishing opportunities not exhausted by another, which brings delays in reallocation and an under-utilisation of fishing opportunities obtained by the EU under bilateral agreements. This has implications, both financially (the EU budget finances these missed opportunities) and economically (certain operators which would be capable of fishing more are unable to do so in the absence of a quick and effective redistribution mechanism).

Finally, data collection is ill-defined. Member States should send to the Commission services data on the capacities of the fishing vessels and on the fished species. The format of the collected data differs from one Member State to another, while the particular process of validation of the catch data brings delays in the application of the Regulation. These difficulties on the collected data and their heterogeneous presentation create a huge work load for Commission services and have a negative impact at the national and European level.

2. Unclear competences of different administrations: The descriptions of certain processes for treating fishing authorisation requests and the deadlines and procedures to respect are unclear. Certain information is verified twice, both at the national and European level, resulting in a lack of efficiency in dealing with the management and monitoring of fishing authorisation requests. The deadlines, at given stages in the process, are difficult to respect because of operational delays and the need to transmit data between all parties involved. To solve the issue, national administrations and Commission services have suggested ad hoc arrangements, such as electronic exchange of data.

3. Shortcomings regarding the rules applicable to private agreements: The current Regulation does not clarify when a ship owner can obtain a fishing authorisation from a third country. The only rules currently applicable are those of the third country. Therefore, the EU cannot effectively control the activity of its fleets. This situation could have a negative impact on fish resources. There are also no minimum standards for the traceability of financial transactions to obtain private licences, leading to legal entanglement, lack of transparency and of efficient monitoring and control of the EU external fleet. Under the current FAR, Member States are not obliged to inform the Commission of fishing authorisations in the framework of private agreements from which their flag ships benefit.

4. Abusive reflagging situations not taken into account: Reflagging, although not illegal in itself, may be linked to illicit strategies to fish more than the authorised quota. This contradicts the very principle of the CFP. Under the current FAR, reflagging could be used to circumvent the exclusivity clause included in the bilateral agreements, which does not allow a European fishing vessel to access the stocks of a third country outside the framework of this agreement. Certain operators use reflagging when they have exhausted their quota and subsequently return some months later to the flag of an EU Member State, this constituting a breach of rules to limit over-fishing of certain species. This could lead to illegal, unreported and unregulated fishing by certain European operators.

The problems encountered in the application of the current FAR could have been better explained and structured. The IA would have benefited from strengthening the evidence used to underpin the analysis of the problems and from including more concrete examples.

Objectives of the legislative proposal

According to the IA, the *general* objective of the Commission proposal is to improve the global governance of the oceans by better monitoring the EU external fishing fleet. Improving the global governance of the oceans seems to be an extremely ambitious objective. The *specific* objectives include:

- 1) Developing a coherent regulatory framework by:
 - improving the coherence and alignment with other existing legislative frameworks
 - clarifying the provisions concerning fishing authorisations obtained within the framework of bilateral agreements
 - clarifying the provisions concerning non-EU fishing vessels operating in Union waters.
- 2) Clarifying the respective roles of the different administrations involved.
- 3) Enhancing the transparency of private fishing authorisations.
- 4) Preventing abusive reflagging.

There do not appear to be any clear links between the problems described above and some of the objectives set. For example, the problem that the criteria for requests and issuing of fishing authorisations in the framework of bilateral agreements and RFMOs are not well defined is only partially addressed, as there are no objectives specifically linked to the issuing of fishing authorisations in the RFMO framework. The specific objectives are presented in a more succinct manner in the executive summary of the IA. There are no *operational* objectives.

Range of options considered

Aside from the baseline scenario described in the first part of the IA, there are four options:

Option 1: Revision of the existing Regulation is limited to ensuring alignment with the Lisbon Treaty provisions.

Option 2: Guidelines to clarify the existing text of the FAR: in addition to option 1, the Commission would elaborate guidelines to clarify how certain provisions, which are currently not sufficiently precise, could be interpreted. In particular, this would concern: procedures, deadlines and responsibilities on the submission, processing and transmission of fishing authorisations issued in the case of Fishing Partnership Agreements (FPAs) or the establishment of lists of vessels authorised to fish within the 'mandate' of RFMO; and reallocation between the Member States of the fishing opportunities which might be unused or underused (Article 10 of the current Regulation). The starting point for these guidelines could be the ad hoc solutions found by the national administrations and the Commission concerning the enactment of procedures linked to fishing authorisations and the opinions expressed by different stakeholders during the consultation. This option would neither allow changing the criteria for granting fishing authorisations nor ensure a coherent and complete regime of management and control of the external fishing fleets.

Option 3: Modification of the current Regulation: this option encompasses the modifications foreseen in both options 1 and 2 and, additionally, introduces legal certainty. The modifications would address shortcomings, uncertainties and gaps in the current Regulation, therefore achieving the objective of providing clear, unambiguous provisions to Member States and private operators. These changes could include, among other things: provisions on establishing a list of eligibility criteria concerning the requests for fishing authorisations; clarification of the deadlines for introducing authorisation requests; deletion of provisions concerning the continuity of fishing activities at the end of a protocol or in a transitional period between two protocols; harmonisation of data regarding the fishing catch and efforts; standardisation of their format and frequency of data transfer to guarantee a high level of activity control; and reallocation of fishing opportunities between the

Member States. Changes would be further introduced to the various definitions, timings and procedures of issuing of licences, and respective roles of the Commission and Member States. This option would entail neither the broadening of the scope of the current Regulation nor the adoption of new provisions going beyond the current rules to simplify and clarify the legal framework; thus, direct authorisations and reflagging would not be covered by this option.

Option 4: Adoption of a new Regulation with an enlarged scope, also covering private fishing authorisations and abusive reflagging: this goes beyond option 3 and includes provisions to cover all fishing activities by introducing the principle of prior authorisation by the flag state. It includes provisions to strengthen the conditions for granting private licences and the monitoring of the fishing vessels benefiting from these. Moreover, it would introduce provisions to prevent reflagging strategies used to circumvent the CFP's rules or the applicable conservation measures. This necessitates the establishment of minimum norms to ensure that European vessels, even during a short period of reflagging, are engaging in sustainable resource management. Chartering will be incorporated and regulated under this policy option. The electronic exchange of data between the Commission and the Member States should simplify the flow of information of fishing authorisation requests and accelerate their handling; creating an electronic, partly public fishing authorisations' register is also envisaged to enhance the transparency of the European fleet's fishing activities.

The preferred option is option 4, as it is found to achieve all the policy objectives and contribute to the international credibility of European Union fishing activities. A greater consideration for, and analysis of, the feasibility of the non-legislative option as compared to the legislative options would have been helpful.

Table 1¹¹ of the IA seeks, with limited success, to synthesise the content of the four different options and the baseline scenario. Unfortunately, they are presented and compared with each other on issues that appear to have little link with the problems discussed or the objectives listed. What is equally striking is the fact that the explanatory memorandum of the proposal presents five possible options and not the four mentioned in the IA and in its executive summary. However, the content of the preferred option is similar in the three documents and corresponds to option 4 described in the IA.

Scope of the Impact Assessment

The options are assessed against their economic, social and environmental impacts in a very broad and superficial manner. The assessment of the impacts of the chosen option dominates the analysis. Furthermore, there is no quantitative analysis. Indeed, the Commission recognises the uncertainties linked to the precise number of vessels affected by this Regulation and notes that the lack of exact data given by Member States makes any quantification attempt 'difficult'.¹² Consequently, the IA does not present a methodology and has not engaged in either a short or long term cost-benefit analysis. The potential impact on fish markets and end-users is not presented in the IA.

Subsidiarity / proportionality

According to Article 3.1 (d) TFEU, the Union shall have exclusive competence in the conservation of marine biological resources under the CFP. Therefore, the principle of subsidiarity does not apply here. The issue of proportionality is mentioned in the explanatory memorandum of the proposal but is not discussed at all in the IA. The explanatory memorandum states that 'the expected advantages clearly outweigh the efforts involved, particularly in terms of the positive impact on the management of fishing resources'¹³, although further evidence is not given. A regulation is chosen as the appropriate legal instrument as it ensures uniform

¹¹ IA, p. 30-31.

¹² IA, p. 31.

¹³ Explanatory memorandum of the proposal, p. 4.

application of the rules concerned throughout the EU. No reasoned opinions had been received from national parliaments.

Budgetary or public finance implications

The IA found no budgetary implications and no significant impacts on national budgets and administrations, although there are likely to be small organisational consequences for administrations (linked with the establishment of the electronic exchange of data and the register). A further examination of additional administrative burdens related to the introduction of enhanced eligibility criteria would have strengthened the IA.

SME test / Competitiveness

The fleet concerned by this Regulation is generally composed of industrial fishing vessels that are longer than 40 metres. The IA states that the vast majority of enterprises in question do not respond to the criteria defining SMEs; thus, no assessment of the impact on SMEs is performed. Regarding competitiveness, the rules envisaged under the preferred option regarding reflagging may impact on the competitiveness of the EU external fishing fleet as it would be submitted to stricter requirements than vessels flying other flags, with the potential consequence of some vessels leaving the European fleet register in favour of less demanding flags¹⁴.

Simplification and other regulatory implications

The revision of the FAR is part of the REFIT programme. According to the explanatory memorandum of the proposal, '[C]larification and simplification of the rules should streamline and improve the processing of authorisation requests, bringing more certainty for economic operators and eliminating overlap between relevant actors. This should help to improve the regulatory framework under which the external fleet operates, while enhancing the control of public authorities'¹⁵. A register on fishing authorisations (containing both a public and a secure part) is proposed to allow all stakeholders to access information on the activities of the external fleet, in line with the rules on the processing of personal data.

Relations with third countries

The proposed regulation will have a positive impact on third countries granting fishing licences to EU vessels. By improving the management of its external fishing fleet, the EU would contribute to producing a benchmark at international level in this field and to better global management of fish resources. Some third countries could thus use the EU's new Regulation in order to change their own systems and reinforce the control on vessels flying their flag.

Quality of data, research and analysis

The IA is written in French with some of the annexes in English. It is confusing that the title of Annex 3 is in French while its content is in English. Explanations of technical terms, which could have improved the understanding of non-experts, are not always provided. In addition, the IA points out that a clarification of the terms 'fishing licence' and 'fishing authorisation' is necessary while the same document seems to sometimes use these two terms interchangeably. Generally, as pointed out below, the IA has a number of inconsistencies; the presentation of the analysis conducted tends to lack clarity; and the information could have been better structured.

The Commission does not appear to have commissioned any external study in preparation of the IA, nor does it mention any recourse to outside experts. However, technical meetings were organized with the Member States.

¹⁴ IA, p. 37.

¹⁵ Explanatory memorandum of the proposal, p. 5.

There is almost no quantitative assessment and, even when this is attempted, it is extremely weak. For example, the IA states that the cost to computerise the procedures and create the register would be at least €150 000 'on the basis of primary estimations'¹⁶, but no further explanation is given. The Commission argues that this cost seems to be relatively modest when compared to the benefits of experience-sharing between administrations and of achieving political objectives, therefore justifying the investment. The report could have provided stronger arguments and clear evidence to prove that the expected benefits outweigh the costs. A better estimation of the administrative costs of the preferred option 4 would have strengthened the quality of the IA. Generally, the qualitative analysis of all options focuses mostly on benefits with just a few references to potential costs.

The proposal envisages that the Commission will lay down the methodology for the reallocation of fishing opportunities between Member States by implementing acts. The IA does not indicate whether these implementing acts would be accompanied by an IA. Moreover, options are not compared against their efficiency, effectiveness and coherence to meet policy objectives but, bizarrely, against their capacity to meet the monitoring and evaluation indicators (see Table 4)¹⁷.

Stakeholder consultation

A public consultation based on a consultation paper and a specific questionnaire took place for 12 weeks between April and July 2013. Only 11 responses were received in total, representing 17 organizations. The IA argues that, even if this number seems low, all categories of stakeholders such as Member States, ship-owners and NGOs were able to present their views. Annex 2 presents the opinions expressed by different stakeholders.

In order to complement the replies received, a technical meeting was organized by the Commission with the Member States on 30 September 2013. The aim was to gather the opinion of those directly concerned by the management of fishing authorisations and discuss certain specific options. Annex 4 presents the matters discussed and the opinions of the nine participating Member States. These underlined the disproportionate amount of work for the administrations and the need for simplification; the inconsistencies of the current Regulation and the need to clarify the roles of the Commission and Member States; and the issues of reallocation of fishing opportunities, private licences and abusive reflagging. In addition, a number of other technical meetings took place with Member States that own the biggest share of the external fishing fleets (Spain, France, Lithuania, Holland and Poland) and with operators from these countries. Finally, an extraordinary meeting by the Long Distance Fleet Advisory Council (LDAC), which included representatives of the fishing sector and NGOs, took place in Brussels on 18 June 2013 to discuss the revision of the Fishing Authorisation Regulation and, specifically, abusive reflagging and private licences (see Annex 3).

The IA identifies the owners of the EU external fishing fleet, the administrations of the EU Member States and the Commission services as the stakeholders most affected by modification of the FAR. 14 national administrations are concerned by the new Regulation (the other Member States do not have an external fishing fleet).

The opinions of the different types of stakeholders are systematically presented for each of the considered options. However, the IA and its executive summary contradict each other in one instance: while the IA states that no group of stakeholders showed support for either option 1 or 2¹⁸, the executive summary indicates that some non-tuna fisheries' associations are satisfied with the current framework¹⁹.

¹⁶ IA, p. 36.

¹⁷ IA, p. 39.

¹⁸ IA, p.26.

¹⁹ Executive summary of the proposal, p. 3.

Monitoring and evaluation

The Commission will set up a group of experts from national administrations to monitor the Regulation's implementation. The IA proposes a number of indicators to monitor and measure the EU capacity to manage the fishing activities of its external fleet. Implementing a transparent system of information for fishing authorisations and the activities of the external fleet will be a first step towards proving the efficiency of the new Regulation. An evaluation will take place five years after its entry into force; the Commission's report will be based on those made by Member States.

Commission Impact Assessment Board

The Impact Assessment Board (IAB) issued a negative opinion on a draft version of the IA report on 24 January 2014. A revised version received a positive opinion five months later. However, the IAB still called for further improvements in a number of respects, notably the need to: strengthen the evidence used to underpin the problem definition; better estimate administrative costs of the preferred option 4; and better explain the content of the options and the way in which they work in practice. These concerns do not appear to have been fully addressed in the IA, although the IAB's request to consistently incorporate stakeholders' views throughout the report does seem to have been covered.

Coherence between the Commission's legislative proposal and IA

The legislative proposal seems to follow the recommendations expressed in the IA.

Conclusions

Overall, the impression is that the IA has made a genuine attempt to articulate what it perceives to be the problems necessitating action and to define the objectives of the initiative. The outcome of the stakeholder consultation, albeit rather limited, is clearly presented and appears to have been integrated into the analysis with a transparent presentation of the stakeholders' views throughout. Nevertheless, the IA has a number of shortcomings. The problem definition lacks the hard evidence required to be entirely convincing. The assessment of impacts is largely qualitative and is focused on benefits with hardly any reference to potential costs. The report would have been more persuasive had it provided stronger arguments and clearer quantitative evidence to prove that the expected benefits outweigh the costs. Generally, the information could have been better structured throughout and a more solid analysis of the compared options would have strengthened the IA.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Fisheries (PECH), analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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