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## Establishing a multiannual plan for demersal fisheries in the North Sea

*Impact Assessment (SWD(2016) 272, SWD(2016) 267 (summary)) of a Commission proposal for a regulation of the European Parliament and of the Council on establishing a multi-annual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks and repealing Council Regulation (EC) 676/2007 and Council Regulation (EC) 1342/2008 (COM(2016) 493)*

### Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [Impact Assessment](#) (IA) accompanying the above [proposal](#), adopted on 3 August 2016 and referred to Parliament's Committee on Fisheries.

[Regulation \(EU\) No 1380/2013](#) on the Common Fisheries Policy (CFP) – known as the CFP Basic Regulation (BR) – establishes multiannual plans as one specific type of measure to be developed 'for the conservation and sustainable exploitation of marine biological resources'. The BR stipulates that 'multiannual plans shall be adopted as a priority' (Article 9) and that they 'shall contain conservation measures to restore and maintain fish stocks above levels capable of producing maximum sustainable yield [MSY].' If this is not possible, these plans must provide for 'measures based on the precautionary approach ensuring at least a comparable degree of conservation of the relevant stocks'. Article 10 of the BR provides further details on the content of such multiannual plans, which must include (among other possible elements), the following:

1. the scope, in terms of stocks, fishery and the area, to which the multiannual plan applies;
2. objectives that are consistent with the objectives set out in the BR;
3. quantifiable targets such as fishing mortality rates and/or spawning stock biomass;
4. clear time-frames to reach the quantifiable targets;
5. conservation reference points consistent with the objectives set out in the BR;
6. objectives for conservation and technical measures to be taken in order to achieve the targets related to the landing obligation established by the BR and measures designed to avoid and reduce, as far as possible, unwanted catches;
7. safeguards to ensure that the quantifiable targets are met, as well as remedial action where the sustainability of the stock is put at risk.

The proposed regulation establishes a multiannual plan to cover the conservation of demersal stocks and the management of demersal fisheries in the North Sea and the adjacent areas.<sup>1</sup> This multiannual plan is a step towards implementation of the Common Fisheries Policy. It has been presented following the finalisation of the Multiannual Plan for the Baltic Sea (proposed by the Commission in 2014), adopted by the Parliament and the Council in July 2016. The IA report reviewed here aims 'to present the problems and challenges produced by the different generations of policy, as well as to outline the main policy alternatives and to examine the options available to introduce the improvements required for an effective and smooth implementation' of the EU's CFP (IA, p.8).

## Problem definition

The IA describes two main groups of problems:

- **Issues related to the current rules governing the demersal fisheries in the North Sea.** The IA states that these rules (system of days at sea restrictions in the two existing management plans for cod and flatfish) have been subject to criticism as being 'prescriptive, ineffective, and inapplicable' (IA, p. 8).
- **Environmental issues.** These include problems related to the actual exploitation of the marine resources in the North Sea e.g. discarding of fish if a single species quota is exhausted, overfishing, fishermen not avoiding catching young fish, lack of precise information regarding the amount of discarding, resource wastage (IA, p. 21).

When articulating these problems, the IA paints a very broad picture, describing the evolution of the CFP and its reform in 2013. The report looks closely into the process of the CFP reform and concludes that the BR adopted in 2013 'promises to solve the problem of overfishing and discarding more effectively' (p. 30 of IA). As the BR had already entered into force when the IA was drafted, and the proposed legislation is in fact a follow-up measure prescribed by the BR, this discussion would perhaps have been better placed as an annex providing background information, rather than in the context of the problem definition. Furthermore, the IA seems to regard the existing BR as being the source of another problem, describing it as 'too strict' and 'to lead to underfishing' (IA, p. 30 ). The IA report concludes the section on the problem definition by stating that if 'no alleviating measures' are taken, 'the Basic Regulation will most likely have negative economic and social consequences for the fishing industry in the coming years' (IA, p.30).

It is not clear from the IA whether the proposed multiannual plan is considered as a measure to improve the existing BR. Nor is it clear whether it is even feasible, given that it is the BR that defines the parameters of the multiannual plan. The description of the problem therefore seems somewhat confusing and poorly linked to the subsequent discussion of the objectives and options. It appears to raise more questions than answers and may seem like a basis for a discussion on ways to review the CFP, which is clearly beyond the scope of this particular IA.

## Objectives of the legislative proposal

With regard to the *general* objectives of the Commission's proposal, the IA refers to the objectives of the BR, i.e. to provide a transparent framework to achieve the maximum sustainable yield exploitation rate by 2015, where possible, and by 2020 at the latest, to apply the precautionary principle approach, and to provide for simplification of EU legislation and of the management of European fisheries. This is in line with Article 9 of the BR on the content of the multiannual plan.

The *specific* objectives of the proposal are:

- to reduce the extent of under-fishing in a mixed fishery under a landing obligation,
- to establish biomass safeguards in order to enable the precautionary approach,

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<sup>1</sup> For more information on the legislative proposal, see Jean Weissenberger, [Multiannual plan for North Sea demersal fisheries](#), Briefing, EPRS

- to facilitate the application of the landing obligation introduced in the reformed CFP,
- to establish the framework necessary for the implementation of regionalisation within the North Sea,
- to remove the days at sea regime which has proven to be ineffective and which is no longer necessary given that the new landing obligation addresses the same underlying problems with different means.

The IA explains that these specific objectives are partly interlinked and refers to the general provisions of the BR (IA, p. 31).

Finally, three *operational* objectives are mentioned (IA, p. 58): to keep fishing mortality ranges as defined by the International Council for the Exploration of the Sea (ICES) for the main target species; to maintain spawning stock biomass safeguards as defined by ICES for the main target species, and to ensure that fishing practices are adopted, through regionalisation, to take into account the specific characteristics of the fisheries in the North Sea. As the content of these three categories of objectives appears to correspond with the provisions listed in Article 10 of the BR, it is not clear how the IA distinguishes between the three types of objectives. For example, the operational objective 'to maintain the stock biomass safeguards defined by ICES' seems to be a rewording of the specific objective 'to establish biomass safeguards in order to enable the precautionary approach'.

## Range of options considered

The IA considers four policy options:

- the existing management approach (no policy change)
- amending the existing plans (for cod and flatfish) and development of plans for several new species
- managing solely according to the new CFP (the Basic Regulation)
- establishing a single mixed-fisheries multi-annual plan.

The first two options were discarded early on during the preparation of the IA on the grounds that 'none of the objectives of the initiative would be reached' (IA, p.32). This is hardly surprising, since the BR is explicit about the development of multiannual plans as a priority measure. In fact on the face of it, this would seem to make all the proposed options redundant, except the last one. The IA report nevertheless identifies the second two options as being potentially viable and conducts the analysis on this premise. Furthermore, the option of 'managing solely according to the new CFP' is treated as a new baseline option in place of the discarded 'no policy change' option. The two selected options are summarised below.

### ***Option 1. Use solely the Basic Regulation (including the landing obligation)***

According to the IA report, this option would aim at repealing the two existing multi-annual plans for cod and flatfish and apply only the Basic Regulation, including the landing obligation. This option would mean that for every stock in the North Sea the management obligation would be to achieve the maximum sustainable yield (MSY) by 2020 at the latest. The IA underlines that under this option a large number of stocks would turn into choke species (IA, p.34). Also, as the IA points out, adopting this option might lead to the absence of safeguards written into the regulation when stocks fall below a stock size consistent with full reproductive capacity. 'In the absence of such semi-automatic initiatives to recover the stocks to safe biological levels, stock recovery is normally slow as decision-makers avoid drastic measures that lead to large reductions in fishing mortality' (IA, p. 35). This appears contradictory to the BR, which explicitly requires the establishment of safeguards. Nonetheless, the IA regards this as 'a realistic baseline scenario' and treats it as such in the analysis (IA, p.42).

### ***Option 2. A single mixed-fisheries plan for North Sea demersal fisheries.***

According to the IA, this option would provide a single management framework for the management of stocks caught together in demersal fisheries in the North Sea. In the words of the report, 'the adoption of such plan would provide more coherence in the definition of fishing opportunities for the different stocks' (IA, p. 35).

It is worth noting, however, that the IA mentions several aspects as representing 'important choices to be made' (IA, p.37). For example, these choices concern the delineation of areas and the consequent fisheries and stocks to be recovered, the choice of how to introduce measures that facilitate the introduction of the landing obligation, the choice of the ranges for the fishing mortality rate and the time period for rebuilding stock to precautionary levels. These choices seem indeed to be important and to correspond to the elements that need to be included in multiannual plans according to Article 10 of the BR. As such, they might have deserved to have been elaborated upon to a greater extent. Instead they are presented as sub-options of Option 2. More specifically, there are four sub-options, which vary depending on:

- the time limit for achieving the MSY: sub-option 2.1 (at the start of 2016) and sub-option 2.2 (by 2020 at the latest);
- the time needed for rebuilding of stocks above precautionary levels (when needed): sub-option 2.3 (5 year rebuilding period) and sub-option 2.4 (10 year rebuilding period).

It should be stated that the four sub-options do not refer to the variables of one element, but in fact represent timeframes for two different elements, namely the safeguard measures and remedial action where the sustainability of the stock is put at risk. It would be logical to assume that the final plan should include both elements and thus that the preferred option would be a combination of the two sub-options. In practice, however, the final choice has not been made with regard to the recovery period, as the proposal does not include a timeframe for recovery.

According to the IA, the preferred option is Option 2 (with the elements of sub option 2.2). This is hardly surprising, as the range of viable options presented in the IA appears to be limited to this very option of establishment of a multi-annual plan. Furthermore, sub-option 2.1 (achieving the MSY at the start of 2016) clearly cannot be realistically considered as viable as the proposal was only adopted by the Commission in August 2016. This renders the comparison of options somewhat less useful and may create the impression that parts of the IA were not updated before its release, thus undermining its credibility.

## **Scope of the Impact Assessment**

The IA provides an assessment of the environmental, economic and social impacts. The results of the comparison of options and their impacts can be found in two tables (IA pp. 52 and 55). The analysis is largely qualitative and relies heavily on the responses of stakeholders. The indicators used in the assessment include the abundance of the main stocks (environmental), landed value, profitability and revenue (economic), the number of vessels and employment (social). As far as the social and economic effects are concerned, all the sub-options represent both positive and negative impacts depending on whether the fishing is carried out below or above MSY.

The scope of the initiative concerns the North Sea which is bordered by seven Member States (Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom). The impact assessment could perhaps have addressed whether there are any differences in the way these Member States might be affected. The IA, however, does not include territorial impacts in the scope of assessment.

## **Subsidiarity / proportionality**

The legal basis for the proposal is Article 3 (1)(d) TFEU which states that the EU shall have exclusive competence in the realm of conservation of marine biological resources under the Common Fisheries Policy. Therefore, the principle of subsidiarity does not apply.

The IA report does not appear to check the regulatory options in the light of the principle of proportionality. However the Commission's Better Regulation toolbox states explicitly that proportionality is 'a key criterion to consider in the comparison of policy options'.<sup>2</sup> The explanatory memorandum of the proposal states that the

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<sup>2</sup> See Tool 3 of the Commission's Better Regulation [Toolbox](#)

proposal complies with the proportionality principle as it is 'appropriate, necessary and no other less restrictive measures are available to obtain the desired policy objectives' (p.5). No further explanation is provided, however.

## **Budgetary or public finance implications**

According to the explanatory memorandum of the proposal, there are no budgetary implications (p. 10). The IA does not present quantitative data regarding administrative costs but states that these costs will be 'considerably lower' under a single management plan (IA, p. 48).

## **SME test / Competitiveness**

The report addresses the question of SMEs in the comparison of options under 'social effects'. According to the IA, given the large number of SMEs in the North Sea fisheries-related sectors (almost all of the businesses concerned), significant direct negative impacts would occur under Option 1 (IA, p. 44). Under Option 2, direct negative impacts are possible (job losses, reduction in crew numbers); they would be lower than under Option 1, however. At the same time, the explanatory memorandum of the proposal highlights that there could be positive impacts because some of the economic losses could be avoided as a result of regulatory simplification and decrease of administrative burden, arguing that fishermen will have more liberty to decide where and when to fish (p. 10). It would seem reasonable to expect the IA report to have provided more concrete examples and evidence that this alleged decrease of administrative burden would be significant enough to compensate for the potential negative impacts on SMEs.

## **Simplification and other regulatory implications**

The proposal is not linked to REFIT, however according to the explanatory memorandum, the proposal reduces regulatory burden, 'as it would repeal two regulations and merge them into a single multi-annual plan' (p.10).

## **Relations with third countries**

The IA does not make any detailed analysis of potential implications in relation to third countries other than referring to the external aspects of the Common Fisheries Policy (Annex II, p.69) and to North Sea demersal stock and fisheries (Annex IV, p.79). As Norway has direct access to the North Sea, the IA could perhaps have clarified whether Norway and the EU have a shared understanding of the problem that the proposal aims to resolve.

## **Quality of data, research and analysis**

The bulk of the analysis cited in the IA report was conducted by three organisations, namely the Commission's Scientific, Technical and Economic Committee for Fisheries (STECF), the International Council for the Exploration of the SEA (ICEF) and the Marine Resources Assessment Group (MRAG). The latter conducted studies under a framework contract with the Commission. The IA mentions that studies were conducted for specific stocks (cod, sole and plaice). It should be noted that some of the data that the IA drew on were dated as early as 2009.

The IA also provides an extensive list of reports and studies that were considered relevant for the preparation of this report (IA, p. 14). Most of these studies were conducted before and during the general reform of the CFP. It is therefore not clear to what extent the specific options considered for the proposal derive from these studies.

## **Stakeholder consultation**

In line with the Better Regulation guidelines, a public consultation was carried out from 9 February to 4 May 2015 with a total of 25 written contributions received. The responses were received from Member States, the Advisory Councils, industry, NGOs and the general public.

There was an equal share of responses from both industry representatives (mostly fishermen's representations) and environmental NGOs (36 % each). The IA report provides a detailed description of the responses with regard

to various aspects of the proposed legislation in Annex I (IA, p. 64). For example, the IA mentions that some stakeholders supported the inclusion of the Eastern Channel in the multiannual plan, while some contributions from the fishing industry had objections (IA, p.38).

In addition to the public consultation, stakeholders were consulted in a targeted manner during the scoping exercise and through consultation with the North Sea Advisory Council. The IA mentions two scoping exercises organised as workshops in Brussels in February and September 2014.

## **Monitoring and evaluation**

As far as monitoring is concerned, the IA assigns this task to the Commission. More specifically, the IA proposes ex-ante and ex-post evaluation of the multiannual plan, with the ex-post evaluation to be conducted five years after the proposal's entry into force. The IA briefly mentions environmental, economic and social indicators that should be used for the evaluation such as, for example, fishing mortality, net profit margin and average wage. The IA does not make a clear distinction between evaluation of the multiannual plan and evaluation of implementation measures, which may be proposed in the future by Member States.

It should be noted that the monitoring provisions in the proposal differ somewhat from those envisaged in the IA. The proposal does not mention the ex-ante evaluation nor does it specify the indicators that should form the basis for the Commission's evaluation. According to the proposal, the Commission is expected to ensure the evaluation of the impacts of the plan on the stocks no less than five years after the entry into force of the regulation and every five years thereafter.

## **Commission Regulatory Scrutiny Board**

The Regulatory Scrutiny Board (RSB) issued a negative [opinion](#) on 6 July 2015 making a number of strong and specific criticisms. On 12 October 2015, the RSB adopted a second, positive, [opinion](#) but listed several recommendations for improvements. It is worth pointing out that there was a considerable period between the second opinion and the adoption of the proposal by the Commission in August 2016. In line with the Better Regulation Guidelines, the IA gives a very detailed presentation of the changes it made to address the initial recommendations of the RSB. Yet, issues concerning the assessment of impacts, in particular the question of how SMEs will be affected, could have been better addressed.

There are other important criticisms which correspond to points raised in this initial appraisal, namely with regard to the comparison of options. In the words of the RSB opinion, the IA should have not only compared Options 1 and 2 but also better explained how the sub-options of Option 2 compare in terms of efficiency, effectiveness and coherence and of the extent to which they attain the objectives. Although the IA report dwells on these criteria, the final result, presented in the form of a table (IA, p. 58), does not differentiate between the sub-options of Option 2 as they all are stated to have the same effect.

## **Coherence between the Commission's legislative proposal and IA**

According to the explanatory memorandum, the legislative proposal appears to follow the recommendations of the IA insofar as the preferred Option 2 (Sub Option 2.2) is the basis for the proposal.

## **Conclusions**

The overall impression is that this IA would have benefited from a more thorough and up-to-date analysis. The IA report appears to some extent to be less focused on deliberating on the specific parameters of the multiannual plan than on discussing various more general policy issues around the North Sea fisheries. The analysis and comparison of options appears to be very limited as only one viable option is presented. The choice in favour of this option seems pre-determined since the establishment of a multiannual plan is already a priority under the

Basic Regulation. The elaboration of the sub-options into fully fledged options would perhaps have provided more depth to the analysis.

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*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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