



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector

(presented by the Commission)

EXPLANATORY MEMORANDUM

Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector¹ needs to be amended, in the context of the reform of the Common Fisheries Policy, for the following reasons:

- the present Regulation includes provisions regarding the restructuring of the Community fishing fleet that must be made consistent with the proposed Regulation on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy²;
- appropriate provisions should be laid down for the period commencing on 1 January 2003 for the existing regime for adjusting fishing capacity which is based around Multi-annual Guidance Programmes (MAGP)³;
- the four successive MAGPs reduced overall capacity between 1983 and 2002, but could not prevent serious deterioration of a large number of economically important fish stocks. Emergency measures had to be taken in 2001 to prevent some of these stocks from collapsing. The Commission has repeatedly highlighted the shortcomings of the MAGPs and the problems linked to their implementation⁴.

In its Communication on the reform of the Common Fisheries Policy (Roadmap)⁵, the Commission underscores the need for a simpler, more effective and more transparent fleet policy, which should be based on the following three main lines of action:

- Restrictions on aid for modernisation, renewal and export of fishing vessels;
- Special measures for vessels affected by multi-annual management plans;
- A simpler system for limiting fishing capacity.

These lines of action are translated in the proposals for a Regulation on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, for a Regulation establishing an emergency Community measure for scrapping fishing vessels, and in the present proposal with regard to the following amendments to Regulation (EC) No 2792/1999:

- renewal of the fleet must take place without any increase in fishing effort, within a sound economic environment and without public financial support. Aid to modernise the fleet will be permitted only if it improves safety, hygiene, working conditions or

¹ OJ L 337, 30.12.2001, p.10. Regulation as last amended by Regulation (EC) No 179/2002 (OJ L 31, 1.2.2002, p. 25).

² OJ C [...], [...], p. [...].

³ According to Decision 97/413/EC concerning the objectives and detailed rules for restructuring the Community fisheries sector, MAGPs cover the period from 1 January 1997 to 31 December 2001. Decision N° 2002/70/CE of 28 January 2002 (OJ L31, 1.2.2002, p.77) extends the period of application of this decision until 31 December 2002.

⁴ Mid-term review of MAGP IV (COM/2000/272 final of 10 May 2000); Green Paper on the Future of the CFP after 2002 (COM/2001/135)

⁵ Roadmap reference

the quality of fisheries products on board, or if it improves fishing patterns (selectivity of gears, etc.) with no increase in fishing effort in either case;

- public aid for the export of vessels to third countries and the setting up of joint ventures will no longer be permitted. Such measures only result in a transfer of Community over-capacity to third countries and do not correspond to a reasonable use of European tax-payer's money;
- measures in support of small-scale coastal fishing should not increase fishing effort especially in fragile coastal marine ecosystems, nor should they increase the impact of towed gears on the benthos;
- socio-economic measures are already used to reduce fishing effort, by encouraging fishermen to retrain or to diversify their activities away from the marine fisheries sector. However, it is proposed to allow the beneficiaries of diversification measures, to continue fishing on a part time basis, provided that their fishing effort is reduced.

Regarding the obligatory financial participations by Member States to measures co-financed by the Community, it is proposed to modify Article 19 of Regulation (EC) No 2792/1999 to simplify the relevant procedures and to speed up reimbursement by the Commission of funds advanced by the Member States.

The proposal determines the extent to which the Treaty rules on state aid are applicable to the fisheries and aquaculture sector (Article 36 of the Treaty). It takes its inspiration partly from a Regulation in the agriculture sector (viz. Article 51 of Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L160, 26.6.1999).

At present, the Member States must notify the Commission of aid regimes foreseen under the plans referred to in Article 3 (3) of Regulation (EC) No 2792/1999 and defined in Article 9(b) of Regulation (EC) No 1260/99, as set out in Articles 87, 88 and 89 of the Treaty.

Payment of Community funds which complement Member States' aid is conditional on the Commission's prior approval of the aid. To speed up the payment of the Community aid and to reduce the administrative burden without relaxing the control regime for state aids, it is proposed to exempt the obligatory financial participations by Member States to measures financed by the Community from the provisions of Articles 87 to 89 of the Treaty. This way, Member States would no longer be obliged to notify co-financed aid. Ex post control – when Member States are reimbursed by the Community for their expenditure – would remain in place. The proposed amendment to Article 19 therefore consists of three new paragraphs:

- the first one establishes the principle by which Articles 87 to 89 apply to aid by Member States to the fisheries and aquaculture sector;
- the second one establishes an exception to the rule set out in the first paragraph, by exempting obligatory financial participations by the Member States for measures subject to Community support, from the provisions of Articles 87 to 89 of the Treaty. Member States will thus no longer be required to notify co-financed aid;
- the third one sets out a procedural point whereby measures which foresee public financing that exceeds the provisions of this Regulation concerning the obligatory financial participations, as referred to in paragraph 2, should be treated as a whole on

the basis of paragraph 1. This also applies with regard to Council Regulation (EC) N° [...] establishing an emergency Community measure for scrapping fishing vessels.

The proposal will have no financial implications on the overall budgetary commitment of the FIG. However, it will be necessary to negotiate with the Member States the introduction of the relevant changes within their programming documents.

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

Having regard to the proposal from the Commission⁶,

Having regard to the opinion of the European Parliament⁷,

Whereas:

- (1) Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector⁸ includes provisions relating to the restructuring of the Community fisheries sector.
- (2) The period of application of Council Decision 97/413/EC of 26 June 1997 concerning the objectives and detailed rules for restructuring the Community fisheries sector for the period from 1 January 1997 to 31 December 2001 with a view to achieving a balance on a sustainable basis between resources and their exploitation⁹ has been extended and will expire on 31 December 2002.
- (3) Appropriate provisions should be laid down for the period commencing on 1 January 2003.
- (4) Consistency must be ensured between the policy for restructuring the fisheries sector and other aspects of the Common Fisheries Policy, in particular the objective of achieving a stable and enduring balance between the capacity of fishing fleets and the fishing opportunities available to them in Community waters and outside Community waters.
- (5) Since this balance can only be achieved by capacity withdrawal, Community financial support to the fisheries sector through the Financial Instrument for Fisheries Guidance (FIGG) should be concentrated on the scrapping of fishing vessels and public aid for fleet renewal should no longer be permitted.

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

⁸ OJ L 337, 30.12.2001, p.10. Regulation as last amended by Regulation (EC) No 179/2002 (OJ L 31, 1.2.2002, p. 25).

⁹ OJ L 175, 3.7.1997, p. 27. Decision as amended by Decision No 2002/70/EC (OJ L 31, 1.2.2002, p.77).

- (6) For the same reason, measures for the equipment and modernisation of fishing vessels should be restricted either to measures to improve safety, navigation, hygiene, product quality, product safety and working conditions or to measures to increase the selectivity of fishing gear, including for the purpose of reducing by-catches and habitat impacts. These measures should be eligible for FIG support on condition that they do not lead to an increase in fishing effort.
- (7) FIG support for measures to assist small-scale coastal fishing should be granted on condition that such measures do not serve to increase fishing effort in fragile coastal marine ecosystems, or that they help to reduce the impact of towed gear on the flora and fauna of the sea bed.
- (8) Transfers of Community fishing vessels to third countries, including transfers made in the context of joint enterprises, do not contribute to the strengthening of sustainable fisheries outside Community waters, therefore public aid for such transfers should no longer be permitted.
- (9) Socio-economic measures aim to support the retraining of fishermen to help them take up full time professional activities outside marine fisheries. These measures may also aim to support the diversification of fishermen activities outside marine fisheries and thereby enable them to continue fishing on a part-time basis, provided that this contributes to a reduction of their fishing effort.
- (10) Detailed rules should be introduced for the granting of compensation and its limitation in time where a multiannual management plan is decided on by the Council or emergency measures are decided on by the Commission or by one or more Member States.
- (11) Articles 87, 88 and 89 of the Treaty should apply to aid granted by Member States to the fisheries and aquaculture sector. However, in order to speed up the reimbursement by the Commission of funds advanced by the Member States, an exception to that principle should be introduced for the obligatory financial input by Member States towards measures co-financed by the Community and provided for under the development plans defined in Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds¹⁰.
- (12) For procedural reasons, all measures entailing public financing over and above the provisions concerning obligatory financial contributions contained in Regulation (EC) No 2792/1999 or in Regulation (EC) No [...] establishing an emergency Community measure for scrapping fishing vessels should be treated as a whole under Articles 87, 88 and 89 of the Treaty.
- (13) Regulation (EC) No 2792/1999 should therefore be amended accordingly,

¹⁰ OJ L 161, 26.6.1999, p. 1. Regulation as amended by regulation (EC) No 1447/2001 (OJ L 198, 21.7.2001, p.1).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2792/1999 is amended as follows:

(1) In Article 1, the following paragraph is added:

“3. Measures adopted pursuant to paragraphs 1 and 2 shall not increase fishing effort.”

(2) Article 2 is replaced by the following

“Article 2

Means

The Financial Instrument for Fisheries Guidance, hereafter referred to as the "FIFG" may, under the conditions laid down in this Regulation, provide assistance for the measures defined in Titles II, III and IV within the fields covered by the Common Fisheries Policy as defined in Article 1 of Regulation (EC) No [.../....] [on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy¹¹], and subject to articles 16 and 23(4) of that Regulation.

(3) Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. Programming, defined in Article 9 (a) of Regulation (EC) No 1260/1999, shall be in accordance with the objectives of the Common Fisheries Policy and in particular with the provisions of Chapter III of Regulation (EC) No [...] [on the conservation and sustainable exploitation of fisheries resources under the Common fisheries Policy]. To this end, programming shall be revised as necessary and in particular in application of fishing effort limits decided under Article 5 and 6 of Regulation (EC) No [.../....] [on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy].

Programming shall cover all the fields referred to in Titles II, III and IV of this Regulation.”

(b) Paragraph 3 is replaced by the following:

“3. The development plans defined in Article 9 (b) of Regulation (EC) No 1260/1999 shall demonstrate that public aid is necessary with regard to the objectives pursued, in particular that, without public aid, the fishing vessels concerned could not be modernised, and that the planned measures will not jeopardise the sustainability of fisheries.

The contents of the plans shall be as set out in Annex I.”

¹¹ OJ L [...], [...], p. [...].

(c) Paragraph 4 is deleted.

(4) Articles 4 and 5 are deleted.

(5) Title II is replaced by the following:

“Title II

MEASURES TO ADJUST FISHING EFFORT”

(6) Article 6 is deleted.

(7) Article 7 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. Member States shall take appropriate measures to comply with the provisions of Chapter III of Regulation (EC) No [.../....] [on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy].

Where necessary, this shall be achieved either by stopping fishing vessels' fishing activities permanently, in accordance with the applicable provisions of Annex III, or by restricting them or by a combination of both.”

(b) Paragraph 3 is replaced by the following:

“3. The permanent cessation of fishing vessels' fishing activities may be achieved by the scrapping of the vessel.”

(c) Paragraph 4 is deleted.

(d) In paragraph 5, points (b), (c) and (d) are deleted.

(e) Paragraphs 6 and 7 are deleted.

(8) Article 8 is deleted.

(9) Article 9 is replaced by the following:

“Article 9

Public aid for equipment or modernisation of fishing vessels

1. Public aid for the equipment of fishing vessels, including for the use of more selective fishing techniques, or for the modernisation of fishing vessels may be granted provided that:

(a) the aid does not concern capacity in terms of tonnage or of power;

(b) the aid does not serve to increase the effectiveness of the fishing gear;

(c) the contents of the plans referred to in Article 3(3) are as set out in Annex I;

(d) the conditions laid down in Annex III are complied with.

2. The effect of granting public aid shall be accounted for in the annual implementation report referred to in Article 21.

3. Expenditure eligible for public aid for the equipment or modernisation of fishing vessels may not exceed the amounts set out in Table 1 of Annex IV.”

(10) Article 10 is replaced by the following:

“Article 10

Common provisions on fishing fleets

Public aid for modernisation and equipment under this Regulation shall be reimbursed *pro rata temporis* when the fishing vessel concerned is deleted from the fishing vessel register of the Community within five years of the modernisation works.”

(11) Article 11 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. For the purposes of this article, "small-scale coastal fishing" means fishing carried on by fishing vessels of an overall length of less than 12 metres and not using towed gear.”

(b) Paragraph 4 is replaced by the following:

“4. For the purposes of paragraph 3, the following projects, *inter alia*, may be considered integrated collective projects:

- safety equipment on board and improvement of sanitary and working conditions,
- technological innovations (more selective fishing techniques) that do not increase the fishing effort,
- organisation of the production, processing and marketing chain (promotion and added value of the products),
- professional requalification or training.”

(12) Article 12 is amended as follows:

(a) In paragraph 3, point (c) is replaced by the following:

“(c) granting non-renewable individual compensatory payments to fishermen who can show that they have worked for at least five years as fishermen, to help them:

- (i) to retrain outside marine fisheries under an individual or collective social plan, on the basis of an eligible cost limited to EUR 50 000 per individual beneficiary; the managing authority shall determine the

individual amount according to the scale of the retraining project and the financial commitment entered into by the beneficiary;

- (ii) to diversify their activities outside marine fisheries under an individual or collective diversification project, on the basis of an eligible cost limited to EUR 20 000 per individual beneficiary; the managing authority shall determine the individual amount according to the scale of the diversification project and the investment made by the beneficiary;”

(b) In paragraph 4, point (d) is replaced by the following:

“(d) that the compensation referred to in paragraph 3(c)(i) for reconversion is refunded on a *pro rata temporis* basis where the beneficiaries return to their work as fishermen within a period of less than five years after being paid the compensation and that the compensation for diversification referred to in paragraph 3(c)(ii) contributes to a reduction of the fishing effort developed by the fishing vessels on which the beneficiaries are active;”

(c) Paragraph (6) is deleted.

(13) Article 16 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) Point (a) is replaced by the following:

“(a) in the event of unforeseeable circumstances, particularly those caused by biological factors; the granting of compensation may last for no more than three consecutive months or six months over the entire period from 2000 to 2006. The managing authority shall furnish the Commission with scientific proof of these circumstances in advance;”

(ii) Point (c) is replaced by the following:

“(c) where a multiannual management plan is adopted by the Council or where emergency measures are decided by the Commission or by one or more Member States; the granting of compensation by a Member State may last for no more than one year.”

(b) Paragraph 3 is replaced by the following:

“3. The financial contribution from the FIGG to the measures referred to in paragraphs 1 and 2 per Member State for the entire period from 2000 to 2006 may not exceed the higher of the following two thresholds: EUR 1 million or 4% of the Community financial assistance allocated to the sector in the Member State concerned.

However, in the case of a multiannual management plan adopted by the Council or of emergency measures decided by the Commission, these thresholds can be exceeded on condition that the measure includes a decommissioning scheme with the aim of withdrawing, within two years of the adoption of the measure, a number of fishing vessels with a fishing effort at

least equal to the effort of the fishing vessels suspended from fishing activity as a consequence of the plan or emergency measure.

To obtain Commission approval for a financial contribution from the FIG, a Member State must notify the Commission of the measure and provide it with a detailed calculation of premiums. The measure shall enter into force only after the Commission's approval has been delivered to the Member State.

The managing authority shall determine the amount of compensation as provided for in paragraphs 1 and 2 to be paid in individual cases taking account of relevant parameters such as the real losses suffered, the scale of the conversion effort, recovery plan or technical adjustment effort."

(c) Paragraph 4 is replaced by the following:

"4. Recurrent seasonal suspension of fishing activity shall not be eligible for compensation under paragraphs 1, 2 and 3."

(14) Article 18 is replaced by the following:

"Compliance with the conditions governing assistance

The management authority shall ensure that the special conditions governing assistance listed in Annex III are complied with.

It shall also satisfy itself as to the technical capacity of beneficiaries and the financial viability of firms as well as their respecting all rules of the Common Fisheries Policy before granting aid. If during the grant period it is found that the beneficiary does not comply with rules of the Common Fisheries Policy, the grant shall be reimbursed.

Detailed rules for the implementation of this article may be adopted in accordance with Article 23, paragraph 2."

(15) Article 19 is replaced by the following:

"Obligatory financial contributions and state aid

1. Without prejudice to paragraph 2, Articles 87, 88 and 89 of the Treaty shall apply to aid granted by Member States to the fisheries and aquaculture sector.

2. Articles 87, 88 and 89 of the Treaty shall not apply to obligatory financial contributions by Member States to measures co-financed by the Community and provided for under the development plans referred to in Article 3(3) of this Regulation and defined in Article 9(b) of Regulation (EC) No 1260/1999 or under Article [...] of Regulation (EC) No [...] establishing a Community measure for scrapping fishing vessels.

3. Measures which provide for public financing exceeding the provisions of this Regulation or of Regulation (EC) No [...] establishing a Community measure for scrapping fishing vessels concerning obligatory financial contributions, as referred to in paragraph 2 of this Article, shall be treated as a whole on the basis of paragraph 1 of this article."

(16) Article 22 is replaced by the following:

“Committee procedure

The measures necessary for the implementation of this Regulation relating to matters referred to in Articles 4, 5, 6, 8, 10, 15, 18 and 21 shall be adopted in accordance with the management procedure referred to in Article 23(2).”

(17) Article 23 is amended as follows:

(a) In paragraph 1, point (a) is replaced by the following:

“(a) for the purpose of the implementation of Articles 8, 15, 18 and 21 by the Committee on structures for fisheries and aquaculture established by Article 51 of Regulation (EEC) No 1260/99; and”

Article 2

Annexes I to IV are amended in accordance with the Annex to this Regulation.

Article 3

This Regulation shall enter into force on 1 January 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX

- (1) Annex I is amended as follows:
 - (a) point 1(c) is replaced by the following:

"(c) requirements of the sector."
 - (b) point 2(d)(i) is replaced by the following:

“(i) indicators concerning the development of the fleet in relation to the objectives of the multiannual management plans;”
- (2) Annex II is deleted.
- (3) Annex III is amended as follows:
 - (a) The title of point 1 is replaced by the following:

“1. Implementation of measures to adjust fishing efforts (Title II)”
 - (b) Point 1.0 is replaced by the following:

“1.0 Age of vessels

For the purpose of this Regulation, the age of a vessel is a whole number defined as the difference between the year of the managing authority’s decision to grant a premium or aid and the year of entry into service as defined in Regulation (EEC) No 2930/86 of 22 September 1986 defining characteristics for fishing vessels¹².”
 - (c) Point 1.1 (b)(iv) is deleted.
 - (d) Points 1.1 (c) and (d) are deleted.
 - (e) Points 1.2 and 1.3 are deleted.
 - (f) The title of point 1.4 is replaced by the following:

“1.4. Fishing vessels modernisation (article 9)”
 - (g) Point 1.4 (b)(i) is deleted.
 - (h) Point 1.4 (b)(ii) is replaced by the following:

“(ii) improvement of the quality and safety of products caught and preserved on board, the use of more selective fishing techniques and of better preserving

¹² OJ L 274 25.09.1986 p.1. Regulation as amended by Regulation (EC) No 3259/1994 of 22 December 1994 (OJ L 339 , 29.12.1994, p. 11).

techniques and the implementation of legal and regulatory provisions regarding health, and/or”.

(i) The following point 1.5 is added:

“1.5. Socio-economic measures (Article 12)

Measures to support the training of fishermen or the diversification of their activities outside marine fisheries must contribute to a reduction of the fishing effort developed by the beneficiaries even if they continue fishing on a part-time basis.”

(j) Point 2.5 (b) is deleted.

(4) In Annex IV, the text preceding Table 3 in point 2 is replaced by the following:

“2. Rates of financial participation

(a) For all the operations referred to in titles II, III and IV, the limits on Community financial participation (A), total State financial participation (national, regional and other) by the Member State concerned (B) and, where applicable, financial participation by private beneficiaries (C) shall be as follows, expressed as a percentage of eligible costs.

Group 1:

Permanent withdrawal premiums (Article 7), small-scale coastal fishing (Article 11), socio-economic measures (Article 12), protection and development of aquatic resources (Article 13(1)(a)), fishing port facilities with no financial participation by private beneficiaries (Article 13(1)(c)), measures to find and promote new market outlets with no financial participation by private beneficiaries (Article 14), operations by members of the trade with no financial participation by private beneficiaries (Article 15), temporary cessation premiums and other financial compensation (Article 16), innovative measures and technical assistance including pilot projects carried out by public bodies (Article 17).

Group 2:

Modernisation of fishing vessels (Article 9).

Group 3:

Aquaculture (Article 13(1)(b)), fishing port facilities with financial participation by private beneficiaries (Article 13(1)(c)), processing and marketing (Article 13(1)(d)), inland fishing (Article 13(1)(e)), measures to find and promote new market outlets with financial participation by private beneficiaries (Article 14), operations by members of the trade with financial participation by private beneficiaries (Article 15(2)).

Group 4:

Pilot projects other than those carried out by public bodies (Article 17).

(b) With respect to operations concerning the protection and development of aquatic resources (Article 13(1)(a)), fishing port facilities (Article 13(1)(c)), measures to find and promote new market outlets (Article 14) and operations by members of the trade (Article 15), the managing authority shall determine whether they fall under group 1 or group 3, in particular on the basis of the following considerations:

- collective versus individual interests,
- collective versus individual beneficiary (producers' organisations, organisations representing the trade),
- public access to the results of the operation versus private ownership and control,
- financial participation by collective bodies, research institutions.”