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**Perspectives for simplifying and improving the regulatory environment of the Common
Fisheries Policy**

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1. INTRODUCTION

Improving the regulatory environment in the EU is one of the key priorities of the Commission and a joint responsibility of the EU institutions and of the Member States. In June 2002, the Commission adopted the Action Plan "Simplifying and improving the regulatory environment"¹, on which basis the Inter-institutional Agreement on 'Better Lawmaking'² was concluded in December 2003. These initiatives establish a broad EU strategy and provide the institutional framework to deliver concrete results to simplify the Community legislation.

In this context, the Commission proposed in February 2003 a framework action for "Updating and simplifying the Community acquis"³, aimed at securing a clear, understandable, up-to-date and user-friendly body of EC secondary law to the benefit of citizens, economic operators and public administrations. This framework sets out six areas of action: simplification, consolidation, codification, repeal, declaration of obsolescence and organisation & presentation of the acquis.

Regarding the common fisheries policy (CFP), simplification is part of the reform adopted in 2002⁴. Significant steps towards this goal have already been taken or are underway, for example by contributions to the implementation of the framework action for "Updating and simplifying the Community acquis" (repeals, declaration of obsolescence, screening) and by other specific initiatives. The proposal for a regulation setting up the new European Fisheries Fund (EFF)⁵. Consideration of this subject has intensified since the last quarter of 2003, resulting in numerous contacts and discussions. In addition the discussions sometimes exceeded the strict limits of simplification within the meaning of the Framework Action⁶ to cover other measures likely to improve the effective implementation of the Common fisheries policy. This Communication sets out the conclusions of all these discussions mentioned as well as analysis carried out within the Commission.

¹ COM(2002) 278 of 6 June 2002.

² The "better regulation" inter-institutional agreement was signed by the European Parliament, the Council and the Commission on 16 December 2003. The main purpose of this agreement is to improve the quality of the Community legislation and its transposition in national law. The agreement defines best practices and sets new aims and commitments. The main elements of the agreement are: improvement of inter-institutional co-ordination and of transparency; establishment of a stable framework for the "alternative instruments"; increased use of impact assessment in the Community decision-making process; willingness to set limiting deadlines for the transposition of directives into national law (see OJ C 321 of 31.12.2003 and corrigendum OJ C 4 of 08.01.2004) (see OJ C 321 of 31.12.2003 and corrigendum OJ C 4 of 08.01.2004).

³ COM(2003) 71 of 11 February 2003. See also the two reports on the implementation of the Framework Action: COM(2003) 623 final and SEC(2003) 1085; COM(2004) 432 final and SEC(2004) 774. (Council Regulation (EC) No 2371/2002).

⁴ (COM(2004) 497 final).

⁵ In its second report on the implementation of the Framework Action of February 2003 (Cf. COM(2004) 432 final) the Commission singled out the following types of action:

⁶ - simplification (amending the substance of legislation for the benefit of citizens, operators and public administrations);
- reduction of the volume (consolidation, codification and the removal of obsolete legislation through repeal or declaration of obsolescence);
- organisation & presentation of the 'acquis' (all aspects related to the presentation and accessibility of official reference databases CELEX and Eur-Lex).

2. STATE OF PLAY

The experience and the consultations undertaken show that improvement of the legal framework of the Common fisheries policy requires efforts at the level of regulatory architecture amongst others in order to attain three objectives:

- improvement in the clarity of existing texts, their simplification and their better accessibility;
- reduction of costs and constraints for public administrations⁷;
- alleviation of administrative costs and constraints for fishermen.

Pursuing these goals would not only simplify the CFP but also improve its effectiveness.

There are some particularly important issues to tackle, such as the clarity of and access to Community documents. Many bemoan the number and volume of existing rules and the fact that provisions are scattered over several documents. It is difficult for the individual to identify relevant information from the body of legislation. The obligation to submit data also raises problems. National administrations have voiced concern over the number and, in some cases, the detail of reports to be submitted regularly to DG Fish and the practical use of such data. The most sensitive issue for fishermen is the requirement to submit data, in particular via the logbook, but also other administrative documents.

Certain chapters of the CFP seem to present more problems, in particular the chapter on enforcement where concerns focus on the scattering of provisions, certain differences between Member States concerning implementation and the workload involved in submitting reports and data. The other key aspect is resource conservation measures. The combined implementation of different management tools, intended to deal with the limitation of input (fishing capacity and effort), the volume of catches (TAC and quota) and the catch composition (technical measures) respectively, is a major source of problems. The complexity is further increased by the fact that there may be different layers of measures, where arrangements adopted in association with the annual TACs and quota regulations or recovery plans are added to ordinary technical measures.

It is important to understand why the current rules are so complex in order to target areas for improvement.

Certain reasons for such complexity cannot be avoided.

- Ease of reading for the layman is difficult to reconcile with the wishes of the expert.
- The CFP covers a varied group of fisheries and addresses several chapters: structures, conservation and the environment, external resources, markets and enforcement.

⁷ The specific requirements of the fisheries sector lead in addition to distinguish between the burden for the national administrations from that imposed on the industry. Both can nevertheless be considered as related to “administrative burden” within the overall meaning of the term as used by the Commission.

- Where a high proportion of key stocks are endangered it is necessary to promote the use of different types of complementary protection measures to combat overcapacity and the overfishing of most resources.
- The situation changes rapidly, particularly concerning biological conditions, which means that documents must be updated.
- Regarding external resources, our various negotiating partners each have their own goals.
- The rules governing fisheries management reflect the efforts made to translate scientific findings into legislation, which is always a difficult task, especially when such findings are subject to rapid review or change.

The specific background to the CFP is another source of its current complexity. Rules adopted in 1983 and amended in 1992 generally fell short of the mark, as the discussions leading up to the reform adopted in 2002 revealed. It is time to take on board the consequences of rules that have led to the current situation of overcapacity and overfishing. In addition to this crucial problem, decision-making procedures have also exacerbated the complexity of current rules.

- Council and Parliament negotiations often result in a more complex final document than the original proposal.
- Several key policy areas have had to be repeatedly reviewed as adopted measures proved inadequate.
- Discussions on the various chapters have often been held in isolation.
- The Council's decision-making procedure at the end of the year for the annual setting of TACs and quotas has made it difficult to hold all the necessary consultations and reach decision in time for the measures to enter into force.
- In legal and political terms, measures have been placed at a higher level than strictly necessary, which has made them harder to amend and simplify.

Discussions on fisheries policy should also be placed within the general context of simplification. Several aspects of this communication are simply an application of the strategy developed by the Commission in February 2003 to the fisheries sector. The CFP can only benefit from the horizontal steps already taken to simplify European Union rules. Nonetheless, other aspects that are central to the overall process do not apply to fisheries policy. The future competitiveness of Community fishing vessels depends much more on replenishing resources, and therefore on effective management measures, than on lightening regulatory restrictions and burdens. Adopting a less prescriptive approach to fisheries policy, for example by setting result-driven obligations without specifying means, raises issues of enforcement. Fishermen are very anxious to achieve a level playing field for all Member States. This is directly linked to fair, standard enforcement, which automatically requires legislation.

To sum up, analysis has shown that, without underestimating the need for a degree of complexity in managing Community fisheries, the current rules have gradually become excessively complex. In addition to the aspects of the CFP that could well benefit from

simplification, many fishermen feel that, whilst they may be necessary, other measures are unduly complex. This perception is another key issue to be addressed.

3. AREAS FOR PROGRESS

Certain developments would help achieve the three above-mentioned goals (improving documents and access to them and reducing the administrative costs and workload for both national administrations and fishermen).

- The most important element in this respect corresponds to the development of the **preliminary consultations** for decisions, and in related aspects such as the increase in the period between the dates of decision-making and of application. This development of preliminary consultations will have to take into account minimum standards for consultation⁸ (sufficient time for consultation, obligation to publish the results, obligation to provide feedback in response to comments received and use of a single contact point for the consultations). This will make it possible to improve the quality of the texts, to make it easier to inform and involve the industry, and hence to facilitate the task of the national administrations.
- The development of preliminary consultations is closely linked to the definition of **multiannual management strategies**, which in addition to its own benefits would make it possible to better prepare the documents by extending the time for preparation. Reducing the frequency of recurrent legislation on TACs and annual quotas would also help reduce the frequency with which scientific bodies are consulted and cut the associated workload.
- It would also be useful for **integrated management strategies** to include the corresponding rules from the various chapters of the CFP, which would ensure management does not appear to be a jumble of measures.
- The establishment and efficient operation of **Regional Advisory Councils** in the framework foreseen by the reform of the CFP⁹, is an essential condition for achieving improved prior consultation and for developing multiannual integrated management strategies.
- **Increased use of information technology** would also improve access to Community texts by electronic means. The Publications Office (OPOCE) already makes available all legislation in a consolidated form on EUR-Lex.¹⁰ Improved access and presentation of the legislation applicable to the fisheries sector would be achieved within the context of already existing initiatives to improve the EUR-Lex data base in collaboration with OPOCE. More systematic use of information technology would simplify greatly the collection and transfer of information for national administrations and the industry alike.

⁸ Commission Communication “Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission” (COM(2002) 704 final).

⁹ Council Decision 2004/585/EC of 19 July 2004 establishing Regional Advisory Councils under the Common Fisheries Policy, OJ L 256 of 03.08.2004, pp. 17-22.

¹⁰ <http://europa.eu.int/eur-lex/en/index.html><http://europa.eu.int/eur-lex/en/index.html>

Other targeted action is also needed to improve the body of rules.

- The process of drawing up documents must be improved. The need to improve prior consultation and the link with setting up Regional Advisory Councils have already been emphasised, but there are also other ways to make progress.
- The number of hierarchical layers of complex legislation should be reduced.
- Certain rules could be transferred to lower-level documents, or come under a wider application of the principle of subsidiarity.
- The role of decisions taken at national level that add to Community rules should be clarified.
- Although the CFP must be underpinned by a legal basis, it is important to identify when regulations are strictly necessary.
- Wherever possible, the aim must be to have a small number of summary documents. This would help maintain consistency between different texts and boost readability.

Practical access to documents concerning the CFP must also be improved. In addition to the above-mentioned aspect of IT use, it can be hard to ascertain an overall structure to the body of documents, references and supplementary texts. These aspects could be set out in a summary of the current rules. It will remain impossible, whatever progress is achieved, for reference texts to be immediately usable by all the interested parties, because of their structure and their method of drafting, as they are not conceived for example for daily use by each individual fisherman. It is time to build on previous attempts to develop information booklets for specific target groups, for example fishermen operating in a specific area, whilst carefully avoiding confusion between explanatory booklets and legal documents. The idea would be to provide fishermen with a small booklet written in appropriate language explaining the rules that concern them, with links to the official reference documents where needed. The Regional Advisory Councils could also play a key role here by designing the booklets and defining the content of each one and target readership.

Reducing the workload for administrations also requires targeted action.¹¹ Analysing the requirements for submitting reports should be a matter of priority. Efficient fisheries management is dependent upon information flows from national administrations to DG Fish, but the current rules and procedures could be simplified to reduce the number of reports by combining them, limiting content to essential and useful data and reducing their frequency. Lastly, regular feedback must be sent to national administrations. Inspection and enforcement are another major source of workload for national administrations, whose resources are set to remain limited. It is therefore essential to improve the cost/effectiveness ratio of the CFP by, to the extent possible, adopting conservation and enforcement measures that, without undermining effectiveness, are the least costly to establish and monitor, and which fulfil the requirements of the principle of proportionality. Analysis must be undertaken to seek the optimum solutions for sourcing and using enforcement methods.

¹¹ The Commission intends to present a communication in early 2005 on methods to measure administrative costs and to launch a pilot phase to determine whether a common EU approach can be envisaged. If a common methodology for measuring the administrative burden of legislation will be endorsed, the Commission services will apply this methodology when assessing the impact of existing or new legislation.

Regarding the goal of **lightening the workload and restrictions for fishermen**, several useful aspects have already been highlighted. Nonetheless, other areas merit further analysis. Fishermen have placed considerable emphasis on the workload involved in data collection, primarily for the logbooks, which they consider are not always relevant to certain fisheries. In particular, they complain of having to send data via various channels that they regard as superfluous, repetitive, or under-used. To overcome these problems, increasing use of IT has already been mentioned. In the medium term, this approach does not exclude adapting logbooks and other documents to address only the specific needs of fishery management, including enforcement. Data flows to fishermen must also be improved, for example by promoting scientists' use of their data. Fishermen would like to see harmonisation of the enforcement methods used by Member States. Under the basic regulation, there is scope for benchmarking via regulations. This will aid the work of the European Fisheries Control Agency, but in no way excludes an analysis of the appropriate level of detail for such a prescriptive approach, nor the development of other approaches based on recommendations, cooperation and exchange of good practice.

External resources have a specific problem.

- Every contracting party to multilateral negotiations (in the United Nations and the Regional Fisheries Organisations (RFOs)) and bilateral negotiations (between the European Community and a third country or group of third countries) may adopt their own position, which the European Union cannot change. Nonetheless, a suggestion has been made on defining a medium-term strategy according to the type of agreement, region or type of fishery to ensure consistency in Community action aimed at achieving a sustainable fisheries policy while at the same time protecting Community interests.
- In the framework of the RFOs, upholding homogenous principles set by the Community will consolidate the EU's position and will help achieve the defined goals. Although the Community's obligations as a contracting or cooperating party are clearly defined, transposing them into Community legislation requires long and cumbersome procedures. Simplified procedures must therefore be considered.
- Regarding bilateral relations (partnership agreements), action by the European Community, fishermen and Member States (including action under other EU policies) could be improved by gradually building up standard legislative frameworks, whilst remaining open to the specific features and issues faced by the fisheries concerned, as well as by improving negotiation and follow-up procedures.

4. RISKS TO BE FORESEEN AND PROBLEMS TO BE ANTICIPATED

The first risk is being unrealistic about the scope for simplification and underestimating the resources and effort involved. The current CFP cannot be replaced in the short-term by radically simplified rules. Several sources of complexity are structural. Moreover, the current situation of overcapacity and overfishing is one of the key factors making complexity inevitable and will continue to feature strongly over the coming years. It is also important to ensure that simplification does not lead to weaker management or provide an excuse for opposing any new measures that may be needed to progress policy or to address new situations. There is also the risk that, after an initial bout of action and raised awareness, simplification quickly drops off the priority list and the causes of the current over-complexity

will creep back. It therefore has to be made sure that the legislator gives sufficient priority to the need for simplicity, and the implementation of the inter-institutional agreement on better law making (particularly for improving the working methods of the Council and the European parliament for examining proposals for simplification) as well as the application of the inter-institutional agreement on the quality of drafting legislation constitute a sound basis in this respect.¹²

In addition to the above general risks, it is important to be aware of the specific limits of some of the approaches to simplification proposed earlier. Increased use of IT could compound the problems faced by inexperienced IT users and some approaches could prove disproportionate for small vessels. Since it is impossible to always win on all fronts, choices and compromises must be made. For example, simplification involves mobilising the services concerned, starting with DG Fish. They will not be able to throw themselves into immediate improvements but will take gradual steps towards the overall strategy which will only come to fruition in the long term.

5. IMMEDIATE FOLLOW-UP: PREPARING AN ACTION PLAN

Simplifying the CFP and improving its effective implementation necessitate a comprehensive and long-term strategy. Some schemes could and should achieve rapid results; others will only come to fruition gradually. Several approaches require trial periods, others require prior discussions. Against this backdrop, a multiannual action plan is the way forward. The detailed content of such a plan cannot be set out immediately as wide-ranging debates and discussions are needed to prepare it. However, a few principles can already be identified to guide the preparations.

First and foremost, any initiative developed under the CFP must be part of the overall process of simplifying the Community acquis and be based on the inter-institutional agreement from 2003.

The duration of the plan could stretch to five years, with an essential mid-term review. It should include schemes for immediate action which, by achieving rapid tangible results, would drive the process forward. It should also cover schemes for medium-term action and others for long-term results to ensure the concern for simplicity retains sharp focus.

Preparing the plan will require close cooperation between Member States, fishermen and other stakeholders in order to identify the rules and articles to be simplified, the method of doing so and alternative solutions to the existing rules. To aid this process, the Commission has produced a Working Document containing an initial list of proposed areas for action intended to guide the discussions and target tangible initiatives.

The final plan will have to be tailored to available resources and a realistic timescale for progress. It cannot include every single possible area for action, nor even those contained in the above-mentioned document. Each proposed initiative must be analysed to ascertain its

¹² Inter-institutional agreement on better law-making (OJ C 321 of 31.12.2003, p.1, corrigendum OJ C 4 of 08.01.2004, p.7); Inter-institutional agreement on common guidelines for the quality of drafting of Community legislation (OJ C 73 of 17.03.1999, p. 1); see also the Joint Practical Guide of the European Parliament, the Council and the Commission, Publications Office, 2003.

benefits, potential obstacles and risks to its success and the human resources needed. Each proposed initiative must specify the role of all those involved and the timescale.

Member States will need to contribute to defining an effective action plan, as will other stakeholders, primarily fishermen, whose opinion is essential to defining priorities. Consultative bodies, in particular the established Regional Advisory Councils and the Advisory Committee for Fisheries and Aquaculture, must be very actively involved.

Consultation procedures needed to draw up the action plan could therefore be held in the beginning of 2005 with the aim of presenting the plan as soon as possible in the same year.

6. CONCLUSIONS

The initial discussions held on how to simplify the CFP have shown that this is a relevant and important issue. The debates revealed the expectations held by all stakeholders, but also the problems to be overcome. They have shown that there is significant scope for improvement but that success depends on the will to move forward and on a sustained effort on the part of all stakeholders. It is now time to strengthen resolve and to press ahead swiftly with tangible initiatives, paving the way for sustainable progress on simplification and improvement of the regulatory environment of the Common Fisheries Policy.