

**Opinion of the 'European Economic and Social Committee on Joint enterprises in the fisheries sector: current state of play and future prospects'**

(2006/C 65/09)

On 14 July 2005, the European Economic and Social Committee decided to draw up an opinion, under Rule 29(2) of its Rules of Procedure, on *Joint enterprises in the fisheries sector: current state of play and future prospects*.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 9 November 2005. The rapporteur was Mr Sarró Iparraguirre.

At its 422nd plenary session, held on 14 and 15 December 2005 (meeting of 14 December), the European Economic and Social Committee adopted the following opinion *nem. con.* with 122 votes in favour and ten abstentions.

## 1. Introduction

1.1 The Common Fisheries Policy (CFP) first envisaged using joint enterprises as a structural policy instrument in Regulation 3944/90, defining them as 'a company incorporated under private law comprising one or more Community shipowners and one or more partners from a third country with which the Community maintains relations, associated under a joint enterprise agreement set up for the purpose of exploiting and, where appropriate, using the fishery resources of waters falling within the sovereignty and/or jurisdiction of such third country, primary consideration being given to the supply of the Community market' <sup>(1)</sup>. During the 1990s, the CFP evolved significantly, and the term 'Blue Europe' became widely used. This has become topical once again, in a context of broader debate on the establishment of a Common Maritime Policy.

1.2 As the CFP evolved, the abovementioned concept of joint enterprises was not reviewed: they were defined exclusively as an alternative fisheries structural policy instrument to the scrapping or final export of vessels, as illustrated by the relevant articles in the Regulations mentioned in point 2.1.2. of this opinion. Therefore, the applicable legislation focused only on financial control.

1.3 However, joint enterprises are more than just a structural policy instrument: they are a means to achieve a series of objectives that are clearly set out in the various EU texts and rules, from market supply to cooperation policy, employment and regional development policies, promotion of responsible fishing, EU intervention in the various regional fishery organisations (RFOs) and, more generally, the presence of capital and skilled workers from Member States in sustainable investment projects in various countries and markets.

1.4 Clearly, with the reform of the CFP, the idea of joint enterprises as a structural policy instrument has become a thing of the past. However, it is also clear that, currently, this reform has resulted in the quasi-total absence of legislation specific to joint enterprises within the context of the EU's own, political powers.

1.5 Moreover, in the opinions requested of it by the Commission, the Committee has always stressed the need to bring joint enterprises in the fisheries sector into line with the new Common Fisheries Policy: this was emphasised in the EESC's opinion on the proposal for a Council Regulation on the implementation of the CFP reform <sup>(2)</sup>, and reiterated in its opinion on the European Fisheries Fund <sup>(3)</sup> with regard to the proposal for a Council Regulation on the Fund <sup>(4)</sup>. The Commissioner for Fisheries was publicly informed of this need during his visit to the EESC's NAT Section on 16 June 2005, and he agreed to take the issue into consideration.

1.6 This opinion aims to further develop the position of the European Economic and Social Committee, putting forward arguments in favour of a new approach to the role of joint enterprises and, therefore, the rules governing them, based on official documents and the facts contained in them.

1.7 It is likely that, if the proposed new approach is adopted, efforts will need to be made to ensure that these enterprises are fully accepted, as they constitute a unique feature of international trade and provide the EU with a specific line of action in international relations.

<sup>(2)</sup> OJ C 85 of 8.4.2003.

<sup>(3)</sup> OJ C 267 of 27.10.2005 (points 3.5.1.1.2.1. and 5.5(2)).

<sup>(4)</sup> COM(2004) 497 final -2004/0169 (CNS).

<sup>(1)</sup> Article 21(a) of Regulation 3944/90.

## 2. General comments

### 2.1 Establishment of joint enterprises in EU law

2.1.1 Joint enterprises were incorporated into Community Law under Council Regulation (EEC) No 3944/90 of 20 December 1990 amending Regulation (EEC) No 4028/86, as a means to reduce the fishing capacity of the Community fleet and supply the Community market, taking account of the scarcity of resources in Community waters and the ban preventing access to the exclusive economic zones of third countries. The approach was fourfold, aiming to eliminate over-capacity, guarantee supply, partially maintain employment and realise political and trade agreements with third countries<sup>(5)</sup>. In order to implement these measures, Commission Regulation No 1956/1991 was adopted<sup>(6)</sup>.

2.1.2 With the adoption of Council Regulations (EEC) 2080/93<sup>(7)</sup> and 3699/93<sup>(8)</sup>, the financing of joint enterprises was integrated into the Financial Instrument for Fisheries Guidance (FIFG). In accordance with the subsidiarity principle, Member States were responsible for selecting, managing and monitoring projects, as well as paying subsidies. These were initially equal to those payable for scrapping or export, and eventually came to represent 80 % of the premium available for scrapping the vessel. A Community shipowner could therefore legitimately consider that the difference in subsidy between the scrapping premium and the premium for export to joint enterprises is due to the maintenance of a favourable relationship between the EU and the new joint enterprise receiving the vessel(s) from the shipowner. These principles were maintained by Council Regulation 2468/98 of 3 November 1998<sup>(9)</sup> repealing Regulation 3699/93, and Council Regulation 2792/1999 of 17 December 1999<sup>(10)</sup>, although it is worth noting that the latter simplified the concept of the joint enterprise, defining it as 'a commercial enterprise with one or more partners who are nationals of the third country in which the vessel is registered'<sup>(11)</sup>.

### 2.2 Background

2.2.1 The Green Paper on the future of the Common Fisheries Policy<sup>(12)</sup> acknowledged the excess capacity of the Community fleet, along with the globalisation of the fisheries sector and the legitimate aspiration of many developing countries to expand their own fishing industries. These three points, paired with the high capital injection that fisheries investments require (fleets, ports, refrigeration, plants, etc.), also acknowledged by

<sup>(5)</sup> Study on joint enterprises in the context of structural aids in the fisheries sector, COFREPECHE 16.6.2000 ([http://europa.eu.int/comm/fisheries/doc\\_et\\_publ/liste\\_publi/bilansm.pdf](http://europa.eu.int/comm/fisheries/doc_et_publ/liste_publi/bilansm.pdf)).

<sup>(6)</sup> Commission Regulation (EEC) No 1956/91 of 21 June 1991 laying down detailed rules for the application of Council Regulation (EEC) No 4028/86 as regards measures to encourage the creation of joint enterprises – *Official Journal L 181 of 8.7.1991*, pp 1- 28.

<sup>(7)</sup> OJ L 193, 31.07.93, p. 1.

<sup>(8)</sup> OJ L 346, 31.12.93, p. 1.

<sup>(9)</sup> OJ L 312, 20.11.98, p. 19.

<sup>(10)</sup> OJ L 337, 30.12.99, p. 10.

<sup>(11)</sup> Council Regulation 2792/1999 of 17 December 1999, Article.8.1(2).

<sup>(12)</sup> COM(2001) 135 final of 20.03.2001.

the Green Paper, should have led to a specific discussion on the importance of joint enterprises in the fisheries sector, with a broader scope than that reflected in the official documents<sup>(13)</sup> at the time.

2.2.1.1 Joint enterprises are a means for the EU to participate and invest in the development of the fishing sector in developing countries, leading to the formation or growth of a fully-fledged economic sector. Supplying these enterprises with fishing vessels is not only beneficial to fishing activity per se, but also boosts other sectors such as ports, services (repairs, engineering, provisioning, consignment, transshipment, loading and unloading, crew services, travel, etc.), effective maintaining of the refrigeration chain (required by EU food safety rules, through investment in costly refrigeration equipment), compliance with health regulations in the food sector and, lastly, the establishment of processing industries.

2.2.1.1.1 As well as maintaining high-quality European jobs among the senior and middle-ranking crew of many vessels, joint enterprises make it possible to create many jobs on the vessels and in the service companies that grow up around them. Such employment could provide local fishermen with decent (as regards working conditions and income) job opportunities, their only other option being a traditional job in a small-scale and often inefficient fishing sector, which can be damaging for local resources due to the scarcity or lack of systems for monitoring, conservation, marketing, etc.

2.2.1.2 The creation of local wealth and the export of catches (whether locally processed or not) make it possible, in turn, to create international value chains in which the benefits are more fairly distributed; the gross domestic product and per capita income generated by the sector in the beneficiary country can be increased exponentially, gradually creating an industrialised fishing sector where there used only to be a coastal fishing sector with inadequate health standards and an unsound commercial base.

2.2.1.3 Joint enterprises have been required to prioritise the supply of European markets: this guarantees the existence and maintenance of investments in the fishing sector made by ship-owners and industrial partners, Member States and the EU itself (through subsidies), and makes it possible to supply a Community market that is in deficit, as fish consumption is increasing as a result of recommendations by scientific and public bodies encouraging Europeans to eat a healthy and varied diet. Furthermore, this supply must strictly obey EU food laws.

<sup>(13)</sup> See Communication from the Commission on an integrated framework for fisheries partnership agreements with third countries, COM(2002) 637 final, 23.12.2002, page 7 and footnote no 15.

2.2.1.4 The activity of joint enterprises in fishing-dependent areas of the EU enables employment levels to be maintained in the sector, by keeping companies' central, technical and commercial offices operational in Europe; the supporting industry also generates jobs, both directly, when large vessels return to their home port in Europe for their four-yearly repairs, and indirectly, as chains of know-how are created with the local service industries mentioned above.

2.2.1.5 Joint enterprises enable the EU to obtain effective data for monitoring and tracking catches in third-country and international waters, by maintaining legal ties with fishing enterprises in their areas of origin. This enables the EU to exercise effective leadership within the competent Regional Fisheries Organisations created or governed under the auspices of the Food and Agriculture Organisation (FAO), the competent UN body in the field<sup>(14)</sup>. This is because, for the purpose of financial control by the Commission, the Member States and the Court of Auditors, joint enterprises must submit half-yearly data on their catches to the Member States.

2.2.1.6 Joint enterprises also allow EU fishing interests to be maintained in international waters and fishing grounds, with standards guaranteed by EU regulatory requirements for responsible fishing, conservation and management of resources, safety on board vessels, monitoring, food chain safety, etc. This would prevent or minimise the harmful effects of foreign fishing fleets which do not promote the development of the third country's fisheries or industry, do not guarantee the standards governing fishing catches for the EU market, and do not enable resources to be monitored responsibly.

2.2.1.7 Lastly, joint enterprises enable the EU to make an effective, lasting contribution to the development of local fishing industries in countries with which fisheries agreements have been reached and where there are joint enterprises or national companies controlled by European shipowners. The fishing industry has generated profits both in third countries and in the EU overall, by enabling the continuous supply of marine products.

2.2.2 None of the above points was mentioned — not even indirectly — in point 3.9 of the abovementioned Green Paper on the International dimension of the CFP<sup>(15)</sup> or in point 5.8 on External relations<sup>(16)</sup>. Joint enterprises in the fisheries sector are not mentioned at all as a valid means of implementing the principles of the fisheries policy proposed by the Green Paper, despite having been endorsed until 2002 by the extensive Community rules in the field, as amply illustrated in this opinion.

<sup>(14)</sup> <http://www.fao.org/fi/default.asp>

<sup>(15)</sup> p. 19.

<sup>(16)</sup> pp. 38-42.

2.2.3 The quasi-total disappearance of joint enterprises from the new CFP is illustrated by the fact that the last report requested by the Commission and containing exhaustive data on the issue dates back to 2001 and does not specify vessels assigned to joint enterprises<sup>(17)</sup>. Prior to this, there had been another specific report, the *Study on joint enterprises in the context of structural aids in the fisheries sector*, dated 16 June 2000. These studies indicate that there are currently 300 joint enterprises accounting for over 600 vessels in all. These enterprises have remained outside the framework of Community fisheries rules, in a legal vacuum. They simply become foreign companies in which EU partners are involved, with a commitment to prioritise EU supply and to transmit information regularly; their only protection is that provided by bilateral treaties for the mutual protection of investments between the source Member State and the beneficiary third country.

### 2.3 Current state of play

2.3.1 During the work which led to the definitive draft of the abovementioned Green Paper, two regulations were approved: Council Regulation (EC) No 1263/1999 of 21 June 1999 on the Financial Instrument for Fisheries Guidance<sup>(18)</sup> and Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector<sup>(19)</sup>. These Regulations maintained the validity, within the FIFG, of joint enterprises in the fisheries sector until the end of their term, i.e. 31 December 2006.

2.3.2 However, since 31 December 2004, joint enterprises have been practically eliminated from the EU's fisheries structural policy, by dint of Council Regulation (EC) No 2369/2002 of 20 December 2002 amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector<sup>(20)</sup>. Joint enterprises continue to fall under EU law inasmuch as they must fulfil the rules that are applicable when they are established, but they lack a specific medium- and long-term regulatory framework.

2.3.3 The justification for removing aid to joint enterprises in the fisheries sector and doing away with almost all legislative references to them is found in recital 5 of the abovementioned regulation, whereby the FIFG is required to concentrate on reducing capacity by scrapping vessels. The reduction of fishing capacity is only one of the many Community policy objectives for which joint enterprises have proved useful and could continue to be so, as explained below.

<sup>(17)</sup> 'European Distant Water Fishing Fleet' some principles and some data, April 2001, available in French and English on the website of the Commission's Directorate-General for Fisheries.

<sup>(18)</sup> OJ L 161 of 26.06.99, p. 1.

<sup>(19)</sup> OJ L 337 of 30.12.99, p. 10.

<sup>(20)</sup> OJ L 258, 31.12.02, p. 49.

### 3. Specific comments

3.1 Need to maintain a specific policy for joint enterprises in the fisheries sector in the context of the CFP

3.1.1 Although they have been removed from current legislation, joint enterprises in the fisheries sector play an economic role that is particularly appropriate in a globalised economy, allowing for savings to be made on costs (which are usually lower in the destination country than the Member State), and promoting technology transfer, the creation and distribution of added value, access to resources and market supply.

3.1.2 Furthermore, joint enterprises make it possible to partially maintain sea- and land-based employment in fishing-dependent areas of the EU; they also help generate new, more skilled jobs in the third countries in which they operate, including the training and up-skilling of workers in the destination country.

3.1.3 Joint enterprises were incorporated into Community law within the fisheries structural policy in 1990 (i.e. fifteen years ago), and have proven to be a useful instrument throughout this period. The unnecessary removal of these enterprises from the new CFP sponsored by the Commission and from the legislation in force since 1 January 2005, will lead to the loss of Community support for a valid instrument of economic cooperation between the EU and third — often developing — countries, and could constitute a breach of the principle of trust that should govern relations between European operators and the EU institutions.

3.1.4 Joint enterprises could and should be considered as a specific aspect of multilateral or bilateral cooperation treaties with third countries; concrete rules should be laid down that take their particular features into consideration, from the point of view of both fishing per se and the promotion and protection of European external investments, customs, labour, tax, etc.

Brussels, 14 December 2005.

3.1.5 Although joint enterprises could, under the current legislation, fall within the scope of 'partnership agreements', no significant practical results have hitherto been observed. There is therefore a need for a regulation that coordinates the disparate responsibilities within the Commission (Directorates-General for Development, Cooperation and Fisheries), and clarifies how employers and other stakeholders should act within the framework of such agreements or other instruments, so that these practical results can be achieved.

### 4. Conclusion

4.1 The Committee recommends that, as part of the work underway to revise the Common Fisheries Policy and in line with the Council's conclusions of 19 July 2004<sup>(21)</sup>, joint enterprises, which are no longer a tool for the structural regulation of fleet capacities and an alternative to scrapping vessels, should be defined as a means to supply markets and take integrated sectoral action, which is available to the EU in the framework of its own powers and under its global and regional agreements and bilateral treaties, so as to implement EU fisheries policies properly, in line with the principles of the FAO and the WTO, taking due care to ensure that there is no increase in fishing capacity that could lead to overfishing.

4.2 The Committee believes that:

4.2.1 The Commission should carry out a detailed, up-to-date assessment of the current situation and potential of joint enterprises in the fisheries sector, and should disclose its conclusions to the other EU institutions and the sectors concerned.

4.2.2 Current Community law should include rules and mechanisms that will give legal security to joint enterprises within a specific stable, long-term framework for action, in the context of bilateral or multilateral agreements with non-EU countries, taking into account the particular nature of the activity and its benefits in terms of management of fisheries resources, market supply, job creation in fishing-dependent areas, creation of added value, cooperation and international trade.

The President  
of the European Economic and Social Committee  
Anne-Marie SIGMUND

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<sup>(21)</sup> See document 11234/2/04 Rev 2 (Presse 221) available at <http://www.consilium.eu.int/>