



## MINUTES OF THE MEETING

### Committee for Fisheries and Aquaculture

31.07.2013

#### 1. Agenda adoption

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#### 2. (Vote) COMMISSION IMPLEMENTING DECISION of XXX extending the multiannual Union programme for the collection, management and use of data in the fisheries sector for the period 2011-2013 to the period 2014-2016

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The document presented to the Committee concerns a draft Commission Implementing Decision extending the multiannual Union programme for the collection, management and use of data in the fisheries sector for the period 2011-2013 to the period 2014-2016

COM informed the Committee about the steps launched before of the vote of the committee (letter sent to all Member States in April announcing the provisions for data collection in 2014, presentation on the transition period made during the National Correspondents Meeting held on the 24/06/2013 during which the need for the vote of the committee was announced).

The Committee was invited to vote on the proposal. All present Member States gave a favourable opinion. The proposal was therefore approved by qualified majority (323 votes).

#### 3. (Debate and vote) Draft Commission Implementing Regulation (EU) No.../.... On the adoption of measures pursuant to Regulation (EU) No 1026/2012 with regard to the Faroe Islands and its fishery on Atlanto-Scandian herring

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The **Commission** gave an introduction to the draft Commission implementing Regulation, which addresses the unsustainable fishing of Atlanto-Scandian herring conducted by Faroe Islands (FO hereinafter) and is based on the EU Trade Instrument (Regulation (EU) No 1026/2012). It indicated that, since the issue is well known by Delegations following discussions held between coastal States, at the Council and at the Committee of 2 July, it would concentrate its presentation on the most relevant issues, as follows:

1) FO complies with the two criteria to be identified as a country allowing non-sustainable fishing: i) non-cooperation and ii) unsustainable fishing.

Contrarily to allegations that no opportunities were given to FO to cooperate, these were numerous: three rounds of coastal States' consultations, bilateral meetings at technical and political levels. Also, contrarily to allegations that lack of results was due to refusal by the other coastal States to discuss the shares of herring, coastal States (including FO) had been open on a process to discuss the shares on the basis of scientific knowledge on zonal attachment.

As to whether the bad state of the stock is a consequence of the unilateral FO quota, what is important to note is that Faroese overfishing will deteriorate the stock and that the long-term management plan agreed by coastal States (including FO) was designed and confirmed as a precautionary plan able to rebuild the stock to MSY, and the unilateral action by FO would undermine this recovery.

2) By the deadline to respond to the notification (17 June), FO had failed to dispel these concerns or to rectify their position and hence the Commission proceed to the subsequent steps to implement measures

3) In evaluating the possible measures in accordance with Article 5(4) of the Trade Instrument, the Commission services sought to ensure that the measures were environmentally sound, effective, proportionate and compatible with international rules:

They are environmentally sound since they are designed to improve the state of the herring stock in the long term, while not producing appreciable negative environmental impact in the short term.

Effectiveness was examined together with proportionality. The Commission sought measures that would be effective but ensuring that similar effects could not be obtained with less stringent measures.

On compatibility with international rules, the Commission extended its presentation and referred to the advice of the Legal Service of the Council issued during the debates on the proposal for the Trade Instrument. It showed how measures, following the guidance of this document, are compatible with international law and especially with WTO (the GATT Agreement). On this instrument, the Commission stressed that the proposal was compliant with the chapeau and the content of Article XX(g) and referred to the even-handedness principle, on the basis of which the EU (together with the remaining three coastal States) had adopted for 2013 a 26% reduction of the TAC and fully applied the joint management plan, comparing this genuine conservation effort with the sharp increase in the FO quota.

4) In describing the measures proposed, the Commission concentrated on the following:

In first place, mackerel is undoubtedly an associated species since it complies with the criteria given in the Trade Instrument. Secondly, effectiveness requires its inclusion (otherwise by fishing mackerel, herring would continue to be inevitably caught). Thirdly, and seeking proportionality, a total ban on herring and mackerel products (which would be very effective since it included fish meal, one of the most important traded goods) was not foreseen but instead the import ban would apply only to easily identifiable products.

As far as the prohibition of access to ports is concerned, the Commission stressed the high effectiveness of this measure at relatively low cost and the fact that certain international instruments (such as the EEA Agreement) foresee such measures.

Regarding the applicability of the measures proposed, the Commission indicated how the TARIC system will help in identifying the products to be refused in customs, but also recognised the possible administrative burden associated to the identification of the equipment and supplies for the herring fishery in relation with the prohibition of exports foreseen in Article 5(3).

Following this general presentation, a tour de table was opened. While the Commission only sought comments on the draft Regulation from Member States, most of these also manifested their intended vote. Most delegations expressed their dissatisfaction at the attitude of the Faroe Islands which had led to the present situation and acknowledged the difficult position of Denmark given the special status of Faroe Islands within the Kingdom of Denmark. All of them wished a rapid solution for the future. A number of delegations announced that they would abstain or give a negative vote because they felt that the Commission should first exhaust all possible peaceful dispute settlement approaches, or for not being convinced of whether Faroe Islands qualified as a country allowing unsustainable fishing within the terms of the Trade Instrument Regulation. Some also signalled possible technical difficulties of implementation; others required better explanation of compliance with international law. The issue of timing of the Regulation was also raised.

The **Commission** then took the floor to clarify a number of points. It insisted in particular on the reasons why the lack of cooperation of FO can be established, bases on facts such as the number of occasions in which shares could be discussed but on which FO had never established a position enabling a true negotiation. It also renewed and expanded its arguments on Faroese failures to comply with international law and compatibility of the measures with trade law and recognised the need to display them more explicitly in the recitals. On the timing of the regulation, it noted that, according to statements by FO, the fishery extends until October and even November, when allegedly herring is still in the FO EEZ. On the possible discrimination alleged by EE, the Commission underlined that in the case of herring, FO is the only country not having adhered to the coastal States arrangement, and the case of mackerel is to be dealt with subsequently and not necessarily at the same time as herring.

In reacting to the Commission explanations, one Member State maintained that the explanations were not convincing and that the facts presented by the Commission may lead to different perceptions. It invited the Commission to reconsider whether the EU has done what is necessary in the context of UNCLOS, taking into account that the lack of cooperation is a concept that in the international scene goes beyond any criteria established in EU law, and that UNCLOS has its own dispute settlement procedures that have not been yet used. The **Commission**, in response, pointed out that it had not been clear at all so far what dispute mechanism the Faroe Islands were seeking to use, that the subject matter of the issue (sharing arrangements, respective quotas) required the involvement of all coastal states in any possible dispute settlement under UNCLOS, and that the clear lack of good faith cooperation by the Faroe Islands has hampered any dispute resolution to date.

The **Commission** then proposed a break so that an amended draft Regulation could be prepared with the aim of taking comments made into account as much as possible and seeking agreement, and so that possible consultations with capitals could be undertaken.

After the break, the **Commission** presented an amended draft with recitals amended to explain better the arguments to specify the international norms not complied with by the Faroe Islands and compatibility with international trade law as required by Germany and in which Article 5(3)

i.e. the prohibition to export vessels, equipment and supplies for herring fishing, had been removed. The Commission confirmed that: (i) It has examined in detail the compatibility of the measures foreseen in the proposed implementing act with international trade rules, in particular with the GATT; the results of that examination will be made available to Member States in due course; (ii) It is convinced that the proposed regulation is compatible with those rules.

The Commission submitted this new version to vote with the following result, which was read out to the Delegations:

Number of Member States voting: 28

Votes FOR: 268

Votes AGAINST: 17

Abstentions: 67

The **Commission** closed the meeting expressing gratitude for the constructive debate that had taken place and wishing that a permanent solution could be obtained soon. It stressed in particular that under Article 7 of Regulation no 2012/2012, any measures taken could be revoked as soon as the underlying issue has been remedied.

#### 4. **Any other business**

## LIST OF PARTICIPANTS

<i>MEMBER STATE</i>	<i>ORGANISATION</i>
BELGIUM	Fisheries Department within the Ministry
BULGARIA	Fisheries Department within the Ministry
CZECH REPUBLIC	Fisheries Department within the Ministry
DENMARK	Fisheries Department within the Ministry
GERMANY	Fisheries Department within the Ministry
ESTONIA	Fisheries Department within the Ministry
IRELAND	Fisheries Department within the Ministry
GREECE	Fisheries Department within the Ministry
SPAIN	Fisheries Department within the Ministry
FRANCE	Fisheries Department within the Ministry
ITALY	Fisheries Department within the Ministry
CROATIA	Fisheries Department within the Ministry
CYPRUS	Fisheries Department within the Ministry
LATVIA	Fisheries Department within the Ministry
LITHUANIA	Fisheries Department within the Ministry
LUXEMBOURG	Fisheries Department within the Ministry
HUNGARY	Fisheries Department within the Ministry
MALTA	Fisheries Department within the Ministry
THE NETHERLANDS	Fisheries Department within the Ministry
AUSTRIA	Fisheries Department within the Ministry
POLAND	Fisheries Department within the Ministry
PORTUGAL	Fisheries Department within the Ministry
ROMANIA	Fisheries Department within the Ministry
SLOVENIA	Fisheries Department within the Ministry
SLOVAKIA	Fisheries Department within the Ministry
FINLAND	Fisheries Department within the Ministry
SWEDEN	Fisheries Department within the Ministry
UNITED KINGDOM	Fisheries Department within the Ministry