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COMMUNICATION FROM THE COMMISSION  
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

## **FISHERIES AGREEMENTS**

**Current Situation and Perspectives**

## INTRODUCTION

The Council Resolution of 3 November 1976<sup>1</sup> laid the foundation for the conclusion of fisheries agreements. After twenty years of experience, the Commission considers it is opportune to reflect on its external fisheries policy<sup>2</sup>.

### SECTION I

#### 1.1 Development of the fisheries agreements 1977-1996

The Community's policy on fisheries agreements came into being officially with the Council Resolution of 3 November 1976 foreseeing the extension by Member States of their fishing zones off their North Atlantic and North Sea coasts to 200 miles with effect from 1 January 1977. This decision was taken in order to protect Community interests in the face of unilateral declarations by several countries extending their sovereignty to 200 miles from their coasts which threatened to interrupt traditional fisheries by Community vessels. The resolution stated, on the one hand, that fishing by third-country vessels in fishing grounds conducted within the 200-mile Community zone must be subject to agreements between the Community and the partner countries concerned, and, on the other hand, that the maintenance of existing fishing rights and the obtaining of new rights for Community fishermen in third-country waters should be determined within the framework of appropriate Community fisheries agreements.

This policy on fisheries agreements was necessary to safeguard an important part of the fisheries sector which ensures vital economic activity - and therefore employment - in the Community in general and, more particularly, in the coastal regions mainly dependent on the fisheries sector. It furthermore contributes significantly to ensuring that the Community market is supplied with fish products.

The Community's fisheries agreements, initially confined to the North Sea, have since been extended to other waters. At present, the Community has concluded 26 agreements, 15 with countries in Africa and the Indian Ocean, 10 with North Atlantic countries including 5 in the Baltic Sea, and one with a Latin American country.

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<sup>1</sup> OJ No C105, 7.5.1981

<sup>2</sup> This communication is complemented by the Commission services working document on fisheries agreements prepared for the European Parliament Seminar in Quimper on 13/14 May 1996.

Since their introduction, there has been a steady evolution in the nature and range of our fisheries agreements. The accession of Spain and Portugal in 1986, with their own network of fisheries agreements and that of Sweden and Finland later, provided an important impetus to the development of the Community's fisheries agreements. For those agreements involving a financial cost to the Community, the international fisheries agreement budget has expanded from 6 MECU in 1981 to 280 MECU in 1996 and the corresponding fishing possibilities have increased from 13 900 GRT to 132 000 GRT (plus the additional 136 600 tons quota in Greenland).

The Commission has furthermore been mandated by Council to negotiate new agreements with Latin American, African and other states<sup>3</sup>.

## 1.2 Nature of the agreements

### *Types of fisheries agreement*

There is no single "agreement type". Rather the nature of the individual agreements reflects the objectives and economic interests of the respective parties. When the agreement with Argentina involving the promotion of joint ventures and joint enterprises was concluded in May 1994, it was considered a "second generation agreement" and all previously concluded agreements were termed "classical" or "first generation agreements".

The Community has concluded a range of different types of agreements with partner countries in the context of its external fisheries policy. They cover:

- the reciprocal agreements under which the Community offers partner countries fishing opportunities in the waters of its Member States against equivalent opportunities for Community vessels in their waters (Norway, the Faroe Islands, Iceland and the Baltic Republics);
- the agreements on access to surplus stocks for Community vessels to fish in the waters of a third country (United States<sup>4</sup>, Canada<sup>5</sup>);
- the agreements on access to resources for Community vessels in exchange for financial compensation (ACP countries of Africa and the Indian Ocean, and Morocco in certain respects);
- the agreement on access to resources under licence and joint venture arrangements in return for financial compensation and market access (Greenland)

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<sup>3</sup> Mandates for new agreements:

Latin America: Chile, Peru, Ecuador, Colombia, Venezuela, Uruguay

Africa: Gabon, South Africa, Mozambique, Namibia

Other areas: Poland, Russia and USA

<sup>4</sup> Expired at the end of 1993

<sup>5</sup> Canada has not yet ratified the 1992 Agreement

- and finally, the agreement with Argentina involving the constitution of joint enterprises and joint ventures.

Each of these models has its own distinct rationale and can be understood notably in relation to historical fishing patterns and arrangements, the state of development of the partner countries' fisheries sector or the presence of common fish stocks occurring in the fishing zones of the Community and the third country.

The Council's adoption of a negotiating mandate for Latin American countries in October 1990 signalled the first major change in the Community's policy on fisheries agreements since it sought to take account of the potential commercial possibilities in countries with already developed fisheries sectors. The main innovation in this approach was that access to fishing possibilities in the waters of Latin American countries would be based, not on the granting of fishing licences by partner countries, but on the constitution of joint enterprises and joint ventures in the fishing industry between Community vessel owners and the third country's fishing interests.

### **1.3 Basic principles**

The fisheries agreements are negotiated in accordance with the guidelines contained in the negotiating directives decided by Council. Their negotiation is based notably on the principles contained in the UN Law of the Sea Convention and, in the case of ACP States, also complies with the ACP/EC Convention. Account is taken of the rights and obligations of coastal states and those of the Community, and particularly the need for cooperation in the international context. A key objective pursued is to ensure the conservation and rational and sustainable use of the fisheries resources concerned.

In relation to the fishing of stocks surplus to the requirements and harvesting capacity of coastal states, the guiding tenet for the agreements are the relevant provisions of Article 62 of the United Nations Convention on the Law of the Sea (UNCLOS) and the ACP/EC Lomé Convention.

Fisheries agreements have been commercial in nature from the outset, namely, the provision of fishing opportunities for the Community fleet, either in exchange for other fishing possibilities for partner countries or the payment of financial contributions. However, this commercial character in no way dissipates the Community's commitment to the conservation of resources in the waters of our partner countries, as reflected in the fishing levels and conditions, control arrangements etc. foreseen in the agreements.

In the case of ACP States, fisheries agreements are a specific element of overall Community policy towards these countries. In accordance with Article 130 V of the EC Treaty, this element has obviously to be consistent with the Community's development policy as laid down in the ACP/EC Convention. Therefore, whilst the objective of our agreements is not to develop the domestic fishing industry of our partner country, including the artisanal fisheries, the Community nevertheless must ensure that the agreement does not constrain their

development or viability.

However, the agreements with ACP countries have their own philosophy, which is not based on development objectives. The commercial concept in this case has to be understood as the definition of mutual concessions of both parties, in other words, a balance between what the Community receives in terms of fishing possibilities and what it pays to the third country concerned.

The global compensation consists essentially of financial contributions, paid by the Community and by the shipowners through the licence fees, but also by "development minded" actions, supported by the shipowners, such as crewing by nationals of the ACP, landing obligations on catches, observers on board vessels, etc..., specifically requested by the third country during the negotiations.

In the context of a commercial transaction, the partner country is completely free to choose the final destination of the financial compensation of the agreement. Usually, the vast majority of the compensation is attributed to the Treasury with a part being devoted to specific actions in the national fishing sector, scientific research on stocks, training in the fisheries sector and inspection services etc. The contribution of the scientific and training programmes in most of the partner countries has enabled them to train or retrain a large number of their nationals in various areas of the fishing sector, as fishermen, observers, scientists, economists and engineers for the processing industry. A welcomed development in relation to the attribution of funds is that the new Agreement with Morocco foresees 30% of the total financing being devoted over the four years of the Agreement to the development of the Moroccan fisheries sector.

Increased emphasis is now being given in the Agreements to promoting effective control on the fishing activities through observer and inspection programmes, the financing of the inspection infrastructure in our partner countries and the establishment in the Member States of specific inspection programmes for vessels fishing under the agreements.

## SECTION II

### ROLE OF THE FISHERIES AGREEMENTS

#### Overall objectives

The objectives laid down for the fisheries agreements in the negotiating directives adopted by Council have ensured a key role for the fisheries agreements in the Community's Common Fisheries Policy. These objectives relate particularly to the direct and indirect employment related to the fishing activities, the level and stability of fishing opportunities provided for the Community fleet; the fish and fish products from Community sources supplied to the Community market and the agreements role in the Community's structural policy for its fleet.

#### 2.1 Socio-economic aspects

One of the principal *raison d'être* for these agreements remains social and economic in nature. By maintaining or expanding fishing possibilities for the fleet in third country waters, the agreements protect the level of direct employment on fishing vessels and indirect employment in on-shore processing facilities and related industries within the Community. Consequently, the continued existence of these agreements is vital for the coastal communities dependent on our fisheries sector as these communities are generally situated in regions economically disadvantaged where there are few, if any, alternative employment opportunities.

An estimated 20 000 persons from the Community are directly employed on 1.300 fishing vessels operating under our fisheries agreements. Conservatively, and based on socio-economic regional studies, it is estimated that one sea-based job generates one land-based job. Therefore, a further 20 000 persons are employed in the fishing industry and the ancillary services directly related to these agreements. This dimension is best illustrated by the agreement with Morocco which accounts, by itself, for over 8 000 fishermen directly employed on the vessels.

The creation and/or maintenance of employment associated with the fisheries agreements is not confined to the Community, since these agreements also generate employment possibilities in the fishing sectors of our ACP partner countries. The agreements foresee the recruitment of local fishermen on our fishing vessels with the number depending on the size of the vessels. Observers are also placed on board and the need for repairs, supplies and other services for our vessels creates further jobs in our partner's ports. The research institutes and inspection services of our partners also benefit from additional employment directly resulting from the operation of the agreements. Where the agreements foresee obligatory landing by Community vessels in our partner countries they contribute to employment in the fish processing industries in those countries.

## 2.2 Markets

A further important objective of the Community's agreements is the supply of fish products to the Community market from Community sources. The Community market constitutes the largest fish market in the world with over 9 million tons in 1993. In that year, the value of imports was 7 billion ECU and, in quantitative terms, 3.6 million tons. In value terms, this exceeded the production within the Community which reached 6 billion ECU for 6.7 million tons.

In this context, it is important to utilise and develop the instruments which will ensure that the supply to the Community market from Community sources maintains its relative importance. The fisheries agreements, when combined with catches by our vessels in international waters, contribute approximately 25% of the Community's overall production. Therefore, they constitute an important vehicle to ensure the supply to the Community market and reduce our trade deficit in fisheries products.

It should be noted that this deficit has increased greatly in recent years, particularly between 1988 and 1990, and now is equivalent to 54% of value in terms of our market needs. This trend can be explained by the expansion in the market itself due to the accession of Spain and Portugal in 1986 and the strong growth in the demand for fisheries products which has seen per capita consumption rise from 15 kg to 22 kg in the period 1983-90.

Our fish processing industry employs 110 000 persons working in 2 500 to 3 000 companies. The issue of supply to the Community market from Community sources is significant therefore in order to avoid over-dependence on imports from third country sources for the supply of raw materials.

The Community, through its fisheries and development policies, has unilaterally put in place special preferential regimes for imports of fish products from ACP countries, Morocco and Greenland. These concessions grant considerable market advantage to certain of our fisheries partners as fish products from ACP countries enter the Community market duty-free and most Moroccan fish products benefit from a similar advantage. In addition, in the context of the agreements with Argentina and Greenland, tariff concessions were granted on fishery products of interest to those countries but these are *erga omnes* in nature. However, with the progressive dismantling of the world's tariff barriers following the Uruguay Round, world markets will become increasingly more open and foreign competitors will be able to compete in the Community market, with a level of costs in some cases well below their Community counterparts.

Certain of the fisheries agreements foresee voluntary or compulsory landings of catches by Community vessels in the ports of the countries where the Community fleet is operating. Both compulsory and voluntary landings promote increased economic activity in these countries. In addition, there are landings of high-quality species which may be used either for processing and subsequent export or supply to the local market.

### **2.3 Fisheries resources**

A joint commitment to the conservation and rational management of the fisheries constitutes a key element of the agreements. In conformity with international law and UNCLOS, it is the partner country and not the Community which determines the existence of surplus stocks and which consequently decides the level of fishing possibilities on offer and the fishing conditions accorded to the different fleets, including the Community fleet. The appreciation of the status of the stocks is the responsibility of the coastal state and since our fisheries agreements actively encourage research on the stocks, negotiations for the renewal of fisheries agreements are based on research data often collected under programmes financed by the Community. In recent years, when catch rates have demonstrated problems with specific fish stocks in certain agreements, the Community has unilaterally sought reductions in its fishing possibilities in order to safeguard those stocks.

The fishing zones within which the Community fleet operate are designed to exclude interference with the artisanal fisheries of the countries in question and where a country has an industrial fishing fleet, the level of fishing possibilities offered to the Community takes account of their needs. However, most of the ACP countries with which the Community has fishing agreements do not possess a significant domestic industrial fleet. Consequently, the Community's fisheries are harvesting resources which might otherwise remain unexploited or would be fished, often illegally, by vessels from other countries; in either case with no advantage to the ACP country.

The Community fleet's presence, in contrast to the presence of vessels from non-Community countries, is well regulated and in ACP countries, defined under clear licensing procedures, with measures for the control of our fleet's activities; the placement of observers on the vessels; inspections at sea and in port. Community vessels are obliged to comply with the technical conditions laid down in the Agreements in relation, inter alia, to authorised fishing zones, gear and mesh sizes.

The Commission has increasingly targeted the implementation of measures both in the waters of our ACP partner countries and within the Community, to ensure that the conservation and technical measures carefully elaborated in the negotiations are adhered to by the Community vessels concerned. To that end, there is financing available under the agreements to enable the third country to strengthen its inspection services and new control systems (satellite) will permit increased and more accurate surveillance. This instrument, linked with the observers on board the vessels, should significantly improve control systems. Equally, specific inspection programmes targeting the vessels operating under certain agreements have been developed by the Member States and an administrative cooperation has been established with the inspection services of the partner countries.



## **2.4 Utilisation of fisheries agreements**

Fisheries agreements are negotiated in order to provide potential access for the Community fleet to the waters of a range of countries. The level of utilisation will vary from one agreement to another and this aspect can be considered from two different perspectives, namely, fishing possibilities and catch levels.

The fishing possibilities fixed in a given agreement depend on many factors, notably the fisheries policies of our partners, the state of the resources and the opportunities sought by Member States for their vessels. The appreciation of the level of utilisation of these fishing possibilities, should take account of the target species of the fleets concerned. There are two different situations in this regard. Firstly, fishing possibilities for tuna and swordfish are fixed by reference to the number of fishing vessels authorised to fish. In view of the highly migratory nature of these species, vessel owners normally request licences to be able to fish throughout the migratory range of the species. In contrast, demersal fisheries under the agreements are based on a different parameter, namely, the level of authorised gross registered tonnage of Community vessels in our partner's waters at a given time.

It will be appreciated that the utilisation of fishing possibilities will vary over the life-time of the agreement depending on numerous factors such as the level of licence fees, catch rates, market prices for the species, climatic and sea conditions, etc. It should be noted that Member States and shipowners incur no penalty if they do not fully utilise the fishing possibilities on offer during the lifetime of an agreement, particularly since shipowners usually pay for their licences on a quarterly basis.

The second consideration relates to the level of catches by Community vessels operating under the fisheries agreements. The Commission sought for many years to induce Member States to communicate the catches of their vessels operating in the waters of countries, particularly ACP countries, with which the Community had an agreement. In 1987, the Commission adopted a Regulation (3151/87) to that effect. This Regulation was annulled by the Court of Justice in 1989. It was not until 1993 that a new control Regulation (2847/93) obliged Member States to exercise control over the fishing activities of their vessels, notably in partner countries. This means that data on these activities on a regular basis has only become available in recent years and the Commission considers that further improvement is needed in relation to the accuracy and regularity of catch reporting by Community vessels operating under such agreements.

The situation in relation to the tuna catches by our fleet is different since they have a separate catch reporting system due to the fact that their fisheries are carried out both in international waters and in the waters of partner countries as they follow the migratory range of the species. Each tuna fishing vessel completes a daily catch form which is then transmitted to the national scientific institute of the Member State of the vessel concerned. The Commission receives an annual statement of catches for each vessel. It is on the basis of this statement that the financial payments are made to partner countries for that portion of the catch of the vessel taken in its waters.

## **2.5 Fishing fleets**

Fishing activities in third country waters under the agreements contribute to reducing the fishing pressure on stocks in Community waters. There are 1 000 vessels engaged in fisheries under the Morocco and ACP agreements and a further 300 vessels are present on average in the other agreements with Norway, Greenland, etc. The presence over many years of the Community fleet in the waters of partner countries under the first-generation agreements, has demonstrated to the latter the development potential for their own fishing fleets to harvest their resources; thus a transfer of know-how and experience. This development has sometimes led to a reduction in the fishing opportunities available to the Community fleet in certain waters.

The second-generation agreements involving the creation of joint enterprises and joint ventures have implications on the Community's structural policy for its fleet. In the case of joint enterprises fishing vessels are transferred definitively from the Community fleet to the fleets of the partner countries concerned. Under such arrangements, our partners modernise their fishing fleets and there is a corresponding reduction in the Community fleet. Where a joint enterprise is created, targeting non-surplus stocks, the Community vessel transferred replaces an existing vessel in the fisheries, with no increase in fishing effort.

In general under the agreements with ACP countries, Community vessels are being accorded access to resources which are surplus to the harvesting capacity of the domestic fleet and otherwise would remain either unexploited or would be exploited by competing high seas fleets, notably Asiatic.

Of course, the fleets of many of the world's developed fishing nations are characterised by the phenomenon of over-capacity i.e. too many vessels compared to available fisheries resources. Efforts are being made to reduce the size of these fleets and no doubt this process, not only in the Community but on a worldwide basis, will continue. This excess fishing capacity threatens the long term sustainable exploitation of the stocks and creates major problems for the economic viability of the fleets. The future development of the fisheries sector is dependent on a reduction in fleet sizes to a level where the level of fishing effort corresponds, at the most, to the maximum sustainable yield of the fisheries resources. This trend allied to the expansion in the fleets of certain developing countries, has implications for the Community's fisheries policy and for the fisheries agreements.

## SECTION III

### Perspectives

A new international legal framework is emerging in world fisheries consisting of the U.N. Convention on the Law of the Sea, the U.N. Agreement on straddling fish stocks and highly migratory fish stocks and the non-legally binding FAO Code of Conduct for responsible fisheries. Since the Community has been a major participant during the process of the elaboration of the above-mentioned instruments, it therefore needs, as a responsible fishing entity, to be active and constructive at the implementation stage as well.

The Community's fisheries agreements cannot remain indifferent to these developments. This instrument, which has been a key part of the Common Fisheries Policy must be capable of adjustment to the new international realities and legal order. The fishing sector will continue to be under close public scrutiny and the fisheries agreements will not escape from this process. These agreements must be, and be seen to be, responsible in terms of fishing practices and balanced in the interests of both parties.

However, different factors will influence the future course of the fisheries agreements.

Firstly, the level of available budgetary appropriations will constitute a key element in determining how the policy will evolve. The current budgetary situation is that the costs of existing agreements leave little margin for the negotiation of new agreements and indeed may compromise the re-negotiation of others in the future. Secondly, new international management guidelines and strategies, in the pursuit of the goal of sustainable exploitation of fisheries resources, as well as the development of their domestic fishing sectors (fleet, processing facilities and ports) by our partners may lead to a reduction in fishing possibilities available for the Community fleet.

The Commission considers that the policy to be pursued in the short to medium term in relation to fisheries agreements needs to be differentiated according to the contrasting fisheries situations surrounding the current agreements.

In the first instance, those agreements involving reciprocal exchange of quotas, and in certain situations joint management of stocks, are a key element of the management of the CFP. In view of this and the fact that the exchange of quotas are balanced, the Commission considers that these agreements should be maintained.

In the second instance, and in regard to the possible conclusion of agreements with new partner countries, the Commission is of the view that, in the main, such agreements will be based on the 2nd generation model involving the promotion of joint enterprises and joint ventures and depending on the mutual interests of both Parties, this approach could also apply to the eventual renewal of existing agreements. The agreement with Argentina has demonstrated the attractiveness of the 2nd generation model, in particular for partner countries with established fishing industries as in Latin America, the southern part of Africa and New

Zealand. This emphasis on a partnership approach between the Community and partner countries, which is not limited purely to the exploitation or extraction phase, constitutes a recognition that a viable long-term mutually beneficial fisheries relationship may be based on a closer integration of the respective fisheries sectors.

Finally, there are those agreements involving a financial cost to the Community, notably those with Morocco, Greenland and the ACP States. The political, social and economic significance and impact for the Community of these agreements in terms of employment, market supply etc. has already been illustrated in Section II.

The budgetary situation applicable to fisheries agreements under the CFP nevertheless imposes new conditions in respect of the conclusion of new agreements, as also in respect of the renewal of existing agreements. The financial reality is that certain agreements could now be allowed to lapse in the interests of concentrating the Community's financial resources on improving those agreements considered to be most attractive to Community shipowners.

The level of utilisation of the agreements, in terms of licences obtained by shipowners is an interesting indicator in this regard. It also demonstrates that certain agreements, systematically under-used to a very large extent, are of limited interest for Community fishermen.

Hence, in the short or medium term, the Community should consider several options.

- (a) Speed up a reduction of the Community fleet operating in non-Community waters.

Such action would require the means to absorb the fleet concerned, which could not be abandoned to its fate. It would therefore call for additional financial resources to those already planned by way of structural adjustment in order to encourage the conversion or scrapping of vessels and to lessen the risk of vessels returning to Community waters at a time when the present overcapacity in such waters must be eliminated.

Furthermore, such a reduction would certainly involve greater dependence on the part of the Community for its supply of fishery products - currently over 54% - and would have a very considerable adverse impact on employment, particularly in the already seriously affected coastal regions of the Community dependent on fisheries.

- (b) Renounce those agreements that are least attractive to the industry as a whole.

Initially certain agreements could fall within this category and eventual savings from these agreements could be switched to other agreements from which a higher economic and social return may be derived. However, this analysis may not ignore certain non-quantifiable factors, and notably the nature of the relationship between the Community and the third countries concerned or even the coherence of our policy regarding the management and control of the fishing activities of distant-water Community fishing vessels.

- (c) Concentrate financial resources on the most attractive agreements.

This option, which adopts the line set out immediately above, would involve negotiating the financial component of those agreements awaiting renewal in order to match it squarely with the true interests of the sector. This would signify that the Community's financial obligations under future agreements would be limited to the financial compensation component, excluding thereby the financing of all other actions. The intended effect would therefore be also to redistribute existing budgetary resources, concentrating them on those current or future agreements which offer the maximum potential.

- d) To modify the current repartition of costs of the fisheries agreements.

Currently, the Community assumes the major share of the cost of the Fisheries Agreements. This option would entail the vessel owners and/or the Member States assuming a greater share of the current cost of the agreements. This adjustment, in addition to the financial implications, could also have the effect of improving the rate of utilisation of certain fisheries agreements.