Opinion of the Economic and Social Committee on the 'Commission proposal for a Council Regulation (EC) laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector' [1]

(1999/C 209/04)

On 19 February 1999 the Council decided to consult the Economic and Social Committee, under Articles 43 and 198 of the Treaty establishing the European Community, on the above-mentioned proposal.

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 4 May 1999. The rapporteur was Mr Muñiz Guardado.

At its 364th plenary session (meeting of 26 May 1999), the Economic and Social Committee adopted the following opinion with 115 votes in favour, no dissenting votes and five abstentions.

The Committee approves the Commission proposal subject to the comments which follow.

1. **Introduction**

1.1. Structural measures in the fisheries sector contribute to the sector's restructuring by creating conditions favourable to its development and modernisation. They therefore form an integral part of the common fisheries policy.

1.2. The establishment of the Financial Instrument for Fisheries Guidance (FIFG) in 1993 and the bringing of structural measures in the fisheries sector under the umbrella of the Structural Funds confirmed their dual affiliation.

1.3. The proposal is designed to adjust programming to the new situation of the Structural Funds.

2. **General comments**

2.1. The proposed regulation is extremely far-reaching. Article 4 of Title I (Programming and implementation) states that the Member States are to present to the Commission a plan covering a seven-year period beginning on 1 January 2000.

2.2. The significance of the topics addressed by the regulation highlights its importance not only as regards the outcome of the consultations held prior to its drafting, but also as to how it will be applied with a view to boosting economic and social cohesion and respecting the subsidiarity principle.

2.3. The new regulation should provide continuity with the current regulations and should prove simpler to implement, as the FIFG is to be used for all structural assistance.

2.4. Title II (Implementation of multiannual guidance programmes for fishing fleets) substantially changes the provisions of the fourth multiannual guidance programme (MGP-IV) for renewing the fleet. It establishes stricter requirements than those laid down in the existing regulation which runs until 2002. However, the new provisions do not fully meet the need for a fleet renewal mechanism that addresses important issues such as safety, seaworthiness, accommodation conditions and obsolescence.

2.4.1. An analysis of fleet renewal trends in recent years shows that a vessel now needs more GT [2] than those withdrawn in order to fish as competitively, have the space needed to meet international standards, and improve conditions for handling the fish on board.

2.4.2. When an old fishing vessel (with an old GT) is replaced by a newly built one (with a new GT), the fairest solution would be to apply an accommodation co-efficient to the old GT to arrive at the new GT.

2.4.3. Acceptance of the requirement that the withdrawn capacity be 30 % greater would oblige us to build smaller vessels. This would pose a risk to safety, as fishermen would then have to fish the same waters in less powerful vessels or purchase and lay up a further vessel in order to build a vessel exactly the same as that withdrawn; this would increase the investment cost and would not improve accommodation conditions or safety on board.

2.4.4. If self-financing is not possible, it becomes more difficult to sell vessels (both in EU Member States and to third countries) and there will be less scope for renewing the fleet.

2.4.5. Vessel renewal should be undertaken according to fleet segment, as part of the MGP, as otherwise the small-scale fishing fleet would be seriously disadvantaged.

---

[1] OJ C 16, 21.1.1999, p. 12.

[2] Category of vessel by tonnage (GT).

2.5. Title II also includes provisions for joint enterprises. The establishment of such enterprises has always been preferable to scrapping, as they help to supply the Community market and maintain some Community jobs, but the proposal lays down constraints and requirements that may make them unviable.

2.6. The common provisions on fishing fleets, small-scale coastal fishing, and socio-economic measures also deserve specific mention. In some instances it would be better to continue the present system, while in others the provisions need to be expanded and clarified.

2.7. Title III (Protection of marine resources in coastal waters, aquaculture, fishing port facilities and processing and marketing) and Title IV (Other measures) are extremely important, even though some articles refer to markets policy - a subject which has not been included in the proposed regulation.

2.8. Title V (General and financial provisions) could herald a return to the type of situation that existed in 1992, when in fact the best answer would be a guarantee of medium and long-term financing.

3. **Specific comments**

The section makes the following specific comments:

3.1. *Title II (Implementation of multiannual guidance programmes for fishing fleets)*

3.1.1. Articles 7 and 10

3.1.1.1. These articles are closely interrelated, and will entail a much stricter programme than the provisions of MGP-IV. It is not clear what technical and legal basis was used to underpin the requirement that, for each individual project, the capacity withdrawn in association with the addition of new capacity must be at least 30 % greater than the new capacity added, in terms of both tonnage and power, except for vessels less than 12 metres long.

3.1.1.2. The section proposes that these articles be amended to make it clear that the granting of aid for the fleet must be tied to compliance with the MGPs and that safety, accommodation and working conditions must be improved.

3.1.1.3. The provisions of subparagraph 1(b) should be amended, as they alter the conditions laid down in Article 3 of the Council Decision of 26 June 1997. This article states that: 'A Member State may exempt fishing vessels of its fleet of less than 12 metres overall, other than trawlers, from the provisions of Article 2. In this case, the aggregate capacity of this fleet segment, expressed in GT tonnage and in kW power, shall not increase beyond the level at 1 January 1997, or beyond the level corresponding to the objectives of MAGP III, for the period to 31 December 2001, except in the framework of programmes for improving safety of navigation at sea.'

3.1.2. Article 8

The following parts of this article should be amended:

3.1.2.1. Article 8(2)(b), as it should be the task of the Commission to draw up the list of third countries to which vessels can be transferred, in the interests of uniformity. Alternatively, the Commission should lay down criteria enabling the Member States to identify countries to which vessels may not be exported.

3.1.2.2. Article 8(3)(a), which only applies to the permanent withdrawal of vessels over 15 years old. It would be better to retain the provisions of Regulation 3699/93 (period of 10 to 15 years), and to stipulate the precise conditions under which aid will not be paid for the export of such vessels.

3.1.2.2.1. It should be the task of the Commission to provide, for all Member States, a list of third countries where the definitive transfer of vessels would not qualify for public aid, or a list of third countries where this exclusion would not apply.

3.1.2.2.2. It is not clear why the proposal eliminates the '10-15 year old' category and creates a specific category in Article 8(3)(a) of 'scrapping premiums: i) 15 year old vessels'.

3.1.3. Article 9

It is important that Regulation 3699/93 should remain in force, but that certain conditions be laid down:

3.1.3.1. When the Council has authorised the Commission to negotiate a fisheries agreement with a third country, the Member State should not grant aid for joint enterprises with that country during the 12 months following the granting of the authorisation unless they have the explicit consent of the Commission.

3.1.3.2. When a fisheries agreement with a third country provides for the establishment of joint enterprises, the Commission should grant an additional premium corresponding to the scales for fleet assistance laid down in Tables 1 and 2 of Annex IV. The Commission would be responsible for the administration and payment of this.

3.1.3.3. The proposal as currently worded makes management much more complicated, and the time-frame is too short. If aid is to be divided into two headings, a new category of joint enterprise with temporary exports for a maximum of four years should be created, to offset the disappearance of temporary joint ventures.

3.1.3.3.1. Joint enterprises are preferable to scrapping, as they prolong a productive asset, supply the Community market, and maintain jobs.

3.1.3.3.2. The establishment of joint enterprises would make up for the disappearance of temporary joint ventures, which are not covered by the proposed regulation.

3.1.4. Article 11

Under Article 11(2), the Commission may take appropriate measures if Member States fail to comply with the obligations listed in Article 11(1). Such measures may include adjustment of the capacity objectives in the MGP and suspension of the introduction of licence applications to third countries under fisheries agreements.

3.1.4.1. A detailed list of all 'appropriate measures' is needed, so that people know where they stand. If such a list cannot be drawn up, Article 11(2) should be deleted, as it flouts the following principles:

3.1.4.1.1. Responsibility. It penalises private legal or natural persons by denying them the possibility of obtaining public aid to renew or modernise their vessels and preventing them from obtaining licences under fisheries agreements with third countries, solely because of failings on the part of the Member States. It penalises vessel owners for their Member State's failure to comply with the information and monitoring requirements of the regulation.

3.1.4.1.2. Proportionality. The general principles of the Community legislative system require that the EU institutions, in exercising their powers, do not impose burdens on economic operators that exceed what is necessary to achieve the aims being pursued.

3.1.4.1.3. Clarity and legal certainty. The generic reference to the adoption of appropriate measures contravenes the principle that, in the case of sanctions, a clear indication of the measures that may be taken must be provided, and that this cannot be left to the discretion of the body imposing the sanctions. The case law of the Court of Justice requires that Community legislation is clear and predictable for interested parties and that it explains precisely what obligations are imposed on them.

3.1.5. Article 12

Greater clarification is needed of what is meant by an 'integrated collective project to improve the structure of their fishing activity'. It should be specified that such projects can also be handled and promoted by fishermen's organisations.

3.1.5.1. For aid to small-scale coastal fishing to be effective, the term 'integrated collective project' must be clearly defined and the regulation should specify that such projects may also be carried out by fishermen's organisations.

3.1.6. Article 13

Under Article 13(4)(c), the compensation referred to in paragraph 3(b) must be refunded if the beneficiary returns to work as a fisherman within less than one year. This period should be made shorter, in order to prevent the refunding of compensation.

3.1.6.1. Amendment is necessary in order to avoid discrimination vis-à-vis vessel owners, who are not subject to a similar obligation when a vessel is withdrawn permanently.

3.2. *Title III (Protection of marine resources in coastal waters, aquaculture, fishing port facilities and processing and marketing). This should include a reference to the development of fishery resources.*

3.2.1. Article 14

This article should provide the possibility of further measures to improve facilities in coastal areas. The obligation in Annex III for the management authority to submit scientific monitoring reports to the Commission every year should also be changed so that such information only has to be provided at the half-way stage and at the end of the five years.

3.2.1.1. The proposed amendment extends the scope of the provisions and establishes a more flexible criterion for scientific monitoring of fishery resources in coastal areas.

3.3. *Title IV (Other measures)*

3.3.1. Article 15

Under Article 15(2)(b), priority will be given to measures implemented by organisations that are officially recognised within the meaning of Regulation (EEC) 3759/92. It should be added that priority will also be given to organisations which carry out particularly significant measures in the marketing field. Such measures should be addressed in Annex III, 3.

Support should also be extended to organisations that are particularly active in finding and promoting new market outlets for fisheries and aquaculture products.

3.3.2. Article 16

This article has more to do with market policy, and should therefore be included in the common market organisation scheme. At all events, it should specify that organisations which share the same main aims as producer organisations are also eligible for the aid mentioned in Article 16(1) and 16(2).

3.3.2.1. There are some countries where little use has been made of the producer organisation system, but where other fishery organisations serve a very similar purpose; these latter organisations should not be denied aid.

3.3.3. Article 17

Article 17(1)(a) stipulates that compensation for unforeseeable circumstances may be provided for a maximum period of two months per year. This may not be long enough, and should be extended to six months. The provisions should cover circumstances caused by both biological and ecological factors.

3.3.3.1. As currently worded, Article 17(1)(b) could discourage the renewal of existing fisheries agreements. The compensation period should be set at one year and a further extension could be granted at the end of that period on the basis of an analysis (scientific, socio-economic, etc.) of the situation.

3.3.3.2. The provisions in Article 17(1)(c) relating to the processing industry need further clarification. They should specify that when the processing industry depends for its supply on a resource covered by a recovery plan, it may receive the relevant compensation (for a maximum of two years, with a possible extension for one further year) on condition that the product is for human consumption and the raw material is not available. Clarification is also needed as to why this period is not the same as that laid down for temporary cessation of activities.

3.3.3.3. In Article 17(3), the threshold of one million euro should be increased, and the percentage of Community financial assistance allocated to the sector in the Member State concerned should be raised to 5 %.

3.3.3.3.1. Experience in the fisheries sector shows that it is vitally important that the periods for temporary cessation of activity be extended (for unforeseen circumstances, non-renewal of fisheries agreements, etc.), and that the aid granted in such cases be increased too.

3.3.4. Article 18

Under Article 18(2), aid should also be available for exploratory surveys to find new fishing grounds.

3.3.4.1. Exploratory fishing projects are extremely important, and it is logical that they should qualify for aid provided their aim is the conservation of fishery resources and they involve more selective techniques. However, this is no reason for not also providing aid for exploratory surveys to find new fishing grounds which can further the same aim.

3.3.5. Annex IV

The scales and rates of assistance listed in tables 1 and 2 represent a 19 % increase which also takes account of inflation. However, this increase is reduced by the percentage figures in table 3. These percentages should be the same as those given in Council Regulation (EC) 2468/98 of 3 November 1998 [1] laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products.

[1] OJ L 312, 20.11.1998, p. 19 to 35.

Brussels, 26 May 1999.

The President

of the Economic and Social Committee

Beatrice RANGONI MACHIAVELLI