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## **WORKING DOCUMENT**

on the implementation of Article 17 of the Common Fisheries Policy  
Regulation

Committee on Fisheries

Rapporteur: Caroline Roose

The Common Fisheries Policy (CFP) aims to achieve various objectives of both an environmental and socio-economic nature. Among the objectives cited in Article 2 of Regulation No. 1380/2013 on the CFP are, in particular, the objective that "the negative impacts of fishing activities on the marine ecosystem are minimized", that of "achieving economic, social and employment benefits", "contribute to a fair standard of living for those who depend on fishing activities, bearing in mind coastal fisheries and socio-economic aspects" and "promote coastal fishing activities, taking into account socio-economic aspects";

Among the many tools available to the European Union and the Member States to achieve these objectives, fishing opportunities (catch quotas or fishing effort quotas) are a particularly powerful tool. The European Union is responsible for setting the annual Total Allowable Catches (TACs) and total fishing effort with the objective of achieving a level of sustainable exploitation of marine biological resources. These quotas are then distributed among Member States according to the principle of relative stability, which means that each Member State receives a stable share of the agreed fishing quotas. It is then within each Member State that these fishing possibilities are distributed among the different fishers and producer organizations.

While the allocation of fishing opportunities remains a competence of the Member States, Regulation 1380/2013 lays down a number of rules and offers a number of possibilities to the Member States, in Article 17 of that Regulation. The parliamentary implementation report aims to study whether the Member States are respecting their obligations under Article 17 CFP and whether they are taking advantage of the possibilities offered by Article 17 in order to achieve the objectives of the CFP.

Article 17 of the CFP reads as follows:

“Criteria for the allocation of fishing opportunities by Member States

When allocating the fishing opportunities available to them, as referred to in Article 16, Member States shall use transparent and objective criteria including those of an environmental, social and economic nature. The criteria to be used may include, inter alia, the impact of fishing on the environment, the history of compliance, the contribution to the local economy and historic catch levels. Within the fishing opportunities allocated to them, Member States shall endeavour to provide incentives to fishing vessels deploying selective fishing gear or using fishing techniques with reduced environmental impact, such as reduced energy consumption or habitat damage.”

Article 16(6) of the CFP also states that each Member State “shall inform the Commission of the allocation method.”

### **Use of transparent and objective criteria**

According to Article 17, it is an obligation for Member States to use transparent and objective criteria to distribute fishing opportunities. According to a report by New Economics Foundation (NEF) and as the rapporteur witnessed during her research, it is often difficult to know exactly how fishing opportunities are being distributed. In many Member States very little official information explaining methods of quota allocation is publicly available. Member States rarely publish the details of their adopted systems or have public registers showing the quota shares held by vessels/owners.

Yet, Article 17 states that the allocation criteria should be ‘transparent’ which implies that the information is publicly accessible. However, according to a 2015 study from the Policy department of the European parliament, 40 % of EU Member States failed to answer survey questions on transparency. Still in 2017, a NEF’s report found out that many Member States such as the Netherlands, Portugal, Poland or Germany do not facilitate access to consistent information to the public which may hinder holding the governments accountable for the implementation of the Article. At the same time, some countries perform relatively well in terms of system transparency - for instance, Bulgaria and Greece which have full point-based assessments in place while Denmark, Estonia and Ireland describe the operationalisation of their criteria (e. g. what are the weights for allocation). Also, both Denmark and Estonia have a publicly available quota register.

Article 17 also requires that the criteria for quota allocation are objective. Currently, in most Member States, the main criteria for the allocation of fishing opportunities is based on historical catches. While this has long been regarded as objective, this criteria raises critics. Such a distribution tends to large scale commercial fishing that has held quotas for decades, rather than local and low impact fisheries.

Further, despite the fact that it is up to Member States to decide how the fishing opportunities are allocated to vessels flying their flag, Article 16.6 of the CFP requires Member States to inform the Commission of the allocation method and thus how Article 17 is being implemented. However, the Scientific, Technical and Economic Committee for Fisheries (STECF) assessment of the social dimension of CFP finds that in 2020 only 16 out of 23 Member States had submitted their responses to the Commission’s respective request. STECF points out the vagueness of the responses which hinders scrutinizing Member States’ progress in the implementation of Article 17.

### **Use of environmental, social and economic criteria**

Article 17 of the CFP regulation provides for Member States to use criteria of an economic, social and environmental nature to distribute fishing opportunities among member states. Though the use of such criteria remains optional for Member States, it is interesting to notice that only a few Member States have changed their fishing opportunities allocation system to introduce such criteria since the adoption of the last CFP reform.

In 2018, World Wildlife Fund (WWF) evaluated the systems used for distributing fishing opportunities and considered that 69% of EU Member States (16 countries out of 23) had “no implementation yet” regarding the criteria “implementing just and sustainable allocation of fishing opportunities”.

Member States use systems of allocations of fishing opportunities that rely heavily on historical landings. Those systems provide very few incentives for fishers who are implementing low-impact fishing techniques as foreseen in the CFP, such as deploying selective fishing gear or using fishing techniques with reduced environmental impact (such as habitat damage).

In its 2021 report “Who gets to Fish” NEF notes that, of the 22 Member States, 17 use an historical landings criteria, 13 use a vessel size (e.g. length, power, weight), 12 use a social criteria (e.g. fisher age, employment contracts), 12 use economic criteria (e.g. quota uptake, profitability, economic value); and 11 use an environmental criteria (e.g. gear type,

pingers). However, in most cases, the social and environmental criteria doesn't weigh much in the final quota distribution.

The report also notes that those quota allocation systems haven't changed drastically since the adoption of the 2013 CFP reform and that not much progress has been made between 2017 and 2021 reports..

In general, although Article 17 also provides for incentives to encourage fishers to use more selective gears or gears with lower fuel consumption and habitat damage, most systems within EU Member States do not take such criteria into account and cannot be described as incentive-based.

#### *Best practice examples (use of environmental, social and economic criteria)*

There are several interesting examples of member states or competent authorities introducing criteria of a social or environmental nature.

In the autonomous community of Catalonia (Spain), a governance decree has established voluntary measures for a fund of 5% of days at sea to be allocated as conservation incentives dedicated to fishers adopting additional measures for the conservation of fishing resources and ecosystems.

Along a similar vein, in the Austral French Territories, the French government has introduced a system according to which 30% of the fishing opportunities are distributed based on environmental criteria. This environmental performance is based on the number of birds caught per 1000 hooks, the skate catch rate, and the rate of line loss. This has provided a strong incentive for fishers to adapt their fishing techniques to minimise their impact on the environment and has proven efficient to reduce the environmental impact of fisheries in this region.

In Malta, environmental criteria are applied in determining bluefin tuna quota allocation, in order to support small-scale fishers using low-impact fishing gear (hook and line). Malta also reserves a portion of its quota for contingency to cover the catches exceeding the individual quota or by-catches of bluefin tuna. This allocation to small-scale fishers is also made on socio-economic grounds to increase the economic resilience of fishers' livelihoods.

For the same purpose, in Denmark, a quota is reserved for boats under 17m and using passive gears. Beyond that, young entrants (defined as under 40 years fishers) are helped to enter into TAC fisheries. For them, quota is loaned for 8 years, after which the quota is returned to the pool. In Finland, as a comparison, historical landings are used as the basis for allocation, with only a small amount of quota reserved for new entrants (4%) held as non-transferable quota for five years.

Sometimes, the introduction of social or environmental criteria also fails on reaching its primary objective. In 2013, France introduced a socio-economic quota in order to rebalance the bluefin tuna quota in favour of small-scale fishers from the French Mediterranean coast. In 2015, as a result of the increase in the national quota, an alternative allocation method was proposed that would make up for the lack of quota increase for vessels that only benefit from the socio-economic quota. According to the new method, a socio-economic quota was distributed so that each vessel with conditions, whether or not it had anteriorities, could have

a quota of at least 0.5 t. Eventually, the reality did not reflect these claimed “socioeconomic” considerations. For instance, in 2021, the small-scale fishers received approximately 10% of the Mediterranean quotas, but more than half of this 10% were dedicated to small-scale boats actually belonging to seiners owners.

### **Consequences on the achievement of CFP and MSFD objectives**

The lack of implementation of Article 17 makes it more difficult for the EU Member States and fishers to reach the objectives of the CFP and of the Marine Strategy Framework Directive (MSFD).

The problems of lack of fairness and objectivity in the allocation of fishing opportunities hinders the process of restoring the marine environment. By applying transparent and objective allocation criteria, Member States could support those fishing fleets that are economically efficient, whose impact on the marine environment is low but who at the same time greatly contribute to society by creating direct employment and are of critical importance to the livelihood as well as to the cultural heritage of several EU coastal communities.

#### *Incentives*

The fact that Member States are not implementing incentivising allocations systems deprives them of a useful tool to reduce the impact of fishing activities on the environment. Article 17 could be used to support the voluntary phase-in of low-impact fishing techniques and the voluntary phase-out of harmful practices. It leaves Member States and the EU only with the possibility to legislate on restricting the use of the most damaging techniques instead of encouraging the uptake of low-impact techniques.

Implementing Article 17 could also be used to improve the implementation of the MSFD. While the MSFD established a framework for the Member States to achieve or maintain good environmental status of their marine environment by 2020 (at the latest), the Commission's assessment report reveals that Member States progress in reaching this objective has not been sufficient.

#### *Small-scale fisheries*

The absence of implementation of Article 17 in favour of small-scale fisheries is also contributing to the gradual disappearance of small-scale fisheries in many Member States. According to the latest STECF Annual Economic Report, the small-scale coastal fleets (SSCF) make up 75% of the EU fishing fleet but contributed 5.3% of the weight landed. However, even with limited access to fishing opportunities and difficulties in competing with large scale fleets (LSF), SSCF performs better in terms of economic efficiency. Indeed, for each euro worth of fishing opportunities SSCF are 3.5 times more efficient in terms of the value landed than LSF. According to the STECF report on social data in the EU fisheries sector, “small-scale fisheries rely on local resources and have lower overhead in terms of capital, but generate a higher number of jobs relative to large-scale industrialized fisheries”.

Consequently, a fairer system of allocation ensuring a wider distribution of fishing opportunities to small-scale and low impact fishers would provide more economic and social benefits, in line with CFP objectives.

Moreover, if the provisions laid down in Article 17 are not applied and the LSF regardless of their fishing method are constantly granted access to a large share of marine resources, there will not be an improvement in the status of stocks. Consequently, the small-scale sector would not see any profits and would not be incentivized to continue its low impact fishing activities. Changing the status quo and acknowledging the relevance of the small-scale sector in allocating quotas would ensure that fishers would be more likely to pursue environmentally friendly activities and accept stricter environmental measures (e.g. establishment of marine protected areas).

Partial and uneven practices in terms of quotas allocation start to be handled by Member States jurisdiction, which begins to establish jurisprudence on this subject. For instance, the administrative court of Montpellier has annulled the order for the allocation of bluefin tuna fishing quotas in France for 2017, considering that this allocation had not taken into account the environmental criterion provided for in Article 17 and considered that such a criterion was not merely optional. The case was initiated by small-scale and low impact fishers who were concerned with an inequitable system of national quota allocation.

Importantly, the outcome can be seen as crucial legal precedent since the Court's ruling draws on provisions enshrined in the CFP and can be further used in other cases on national levels. Indeed, it reaffirms that the implementation of Article 17 is mandatory regarding wider objectives of the CFP. For instance, it is mentioned in the CFP that "The CFP shall ensure that fishing and aquaculture activities are environmentally sustainable in the long-term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits".

#### *Concentration in the seafood sector*

In countries where historical catches are the main criteria for allocating fisheries opportunities, it makes fishing possibilities linked to vessels themselves. This plays a role in the concentration of the fishing quota in the hands of a few owners. Companies can buy vessels to which quota is attached to concentrate more quota. For example, in order to launch the super trawler *Scombrus*, the company "France Pélagique" bought several vessels to which quotas were attached, scrapped those vessels and transferred their quota to this new super trawler. Since this quota was associated with no economic or social criteria, the company had free hands to make that change. As the *Scombrus* doesn't land its captures locally but in a third country, this will have important negative consequences for the local economy in the downstream sector.

#### *Generational renewal*

The fact that quotas are attached to vessels also artificially raises their price, making it hard for young fishers to start a business in fisheries. It means that young fishers often have to start their career on old vessels, which can represent either an obstacle to starting a career or a safety issue aboard those old vessels. Article 17 is thus an opportunity that must be grasped to attract young people as, according to the STECF the 40-64 age group makes up the largest proportion of fishers in the EU (58 %), while 7 % are aged over 65 years. As underlined in the recently adopted report "Fishers for the future" by the European Parliament, facilitating generational renewal would also enhance territories' development and bring about positive externalities of fishing activities by securing populations in coastal areas and preserving the

cultural heritage of these communities.

### **Possible recommendations**

We have seen that Member States have poorly implemented Article 17 of the CFP Regulation, both regarding their obligation to use transparent and objective criteria to distribute fishing opportunities, and regarding the possibility for them to use criteria of an economic, social and environmental nature.

While the use of criteria of an economic, social and environmental nature is only presented as a possibility and not an obligation for Member States, there is no path for Member States to reach the objectives stated in the CFP and the MSFD without using such criteria to distribute fishing opportunities.

Hence, the Commission should ensure that each Member State allocates fishing opportunities by using a combination of environmental, social and economic criteria. These criteria must be balanced depending on the local specificities and challenges to be tackled, taking into account that only healthy and productive oceans can provide a livelihood for fishers in the future. It would be important to reflect on using such criteria for the recreational fisheries.

Based on the best available scientific advice, and in consultation with all stakeholders, objectives should be defined and criteria should be drawn to reallocate a portion of fishing opportunities. For instance, in a region where the generational renewal is identified as an important issue to be addressed, a share of fishing opportunities could be distributed to new entrants. Where the bycatch of sensitive species is high, a share of fishing opportunities could be distributed based on a performance indicator on the amount of unwanted catches, which would encourage fishers to adapt their fishing practices and would make the necessary investments more viable in the long term. Where small-scale fisheries are threatened, a share of quota could be specifically allocated to them.

We believe the Commission should engage in more pro-active work with Member States to investigate ways to distribute fishing opportunities in line with Article 17 recommendations.

We call for the establishment of a target that 30% of fishing opportunities be distributed on criteria of an environmental and social nature by 2030. We call on the Commission to include this target in the upcoming Action Plan to conserve fisheries resources and protect marine ecosystems.

Finally, as quota shares represent entitlements to a public resource, we believe they should be made transparent through a publicly available register. Beyond that, the Commission should ensure that each Member State uses transparent and objective criteria when allocating fishing opportunities. Indeed, making this information publicly available will allow both the Commission and civil society to monitor progress towards the proper implementation of Article 17 and all the potential positive outcomes already mentioned in terms of generation renewal, employment, economic efficiency, impact on the environment, and cultural heritage of coastal territories.