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THE EUROPEAN UNION**

**Brussels, 24 November 2011**

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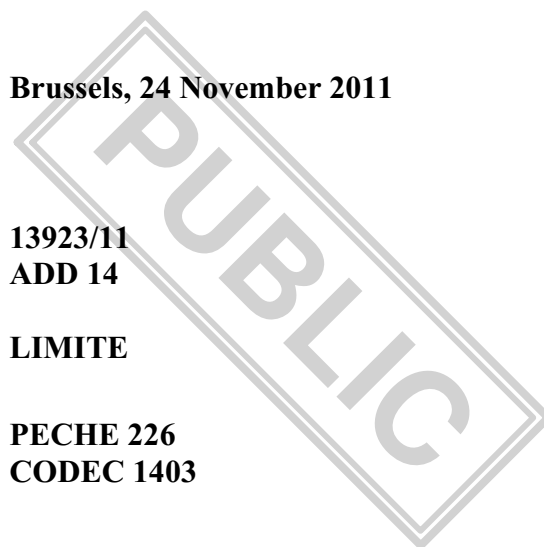
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**PECHE 226  
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**NOTE**

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from: Netherlands delegation

to: General Secretariat of the Council

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No. Cion prop. : 12514/11 PECHE 187 CODEC 1166 - COM(2011) 425 final

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Subject : Proposal for a Regulation of the European Parliament and of the Council on the  
Common Fisheries Policy

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Delegations will find enclosed written comments received from the Netherlands delegation on the above-mentioned subject.

The aim of this note is to set out the position of the Netherlands on the Regulation of the European Parliament and of the Council on the Common Fisheries Policy. The Dutch authorities reserve the right to supplement these comments in light of the ongoing discussions on the proposal.

## **Part I General Provisions**

### Article 1 Scope

- Paragraph 1(b) is very broadly formulated. It refers to “fresh water biological resources”. NL does not want to include sweet water fisheries in the CFP. In the Recitals however the formulation is clear.  
Paragraph 1(b) could be split in two: a new indent (c) in which the link between sweet water resources with only CMO and EFF is made explicit and consequently skip this element from indent (b).
- Paragraph 2(c): for NL it is very important that this paragraph remains in the text. Recital (2) should explicitly state that the basis regulation covers EU vessels inside and outside EU waters.

### Article 2 General objectives

- Paragraph 1: After “activities” insert “inside and outside EU waters”.  
NL wants the specific sequence “ecology, economy and social” maintained.
- Paragraph 4: NL positive about this new objective. But must be further elaborated / made more concrete in text of Basic Regulation, especially in article 11

### Article 3 Specific objectives

- Indent (a): NL supports intention of the text. For NL it is important to acknowledge important contribution more selective fisheries has in “eliminate unwanted catches”. Look for a formulation which is more in line with Recital (9), which specifies “minimise and progressively eliminated”.
- Indent (c): replace “food security” by “food supply”
- Include new indent which reads g. “in the field of external policy take into account food security and food strategies of developing countries”.

### Article 4 Principles of good governance

- Add new indent (g) copying the text in Recital (8).

### Article 5 Definitions

- Definition (2): by adding the part “through all stages of their life cycle” this definition of marine biological resources is at odds with the scope of this regulation which only includes sweet water where this relates to the market- and financial part of the CFP.
- Definition (4): definition refers to “fishing” instead of “exploitation”, which is more limited than present definition, as a consequence of which the fleet register will have to be adapted (removal of some vessels from the register). The proposed definition does not fit with the control regulation. Maintain present definition.
- Definition (5): This definition should be linked up with the Control- and IUU Regulation.
- Definition (14): This definition is too limited and should be deleted (and included in the relevant article instead).
- Definition (23); does this include sport fisheries?
- Definition (25): must refer to definition in Control Regulation.
- Definition (26): in future this definition might prove to be too limited. A qualitative description which is also apt for the future must be sought after.

- Definition (28): delete “have the capacity”.
- Definition (30): definition as from “, including” onwards is not clear and this part should be deleted. Would be better to use standard (ICES) definition.
- Definition (31): add the word “together”: “being caught together in the fishing gear”.
- Definition (32): very limited, outdated (and therefore disappointing) definition. Highly resembles the *fish, pay and go* system. Should deal not only with access to waters but also with sectoral support and development objectives. Also this definition is in contradiction with Commission intentions for new generation partnership agreements in the Communication.

## **Part II Access to waters**

### Article 6 Access to waters

- Paragraph 4: this used to be done on the basis of a report from the COM and decision by Council. How it will be done now is unclear (not mentioned at all). Who will take decision? In addition NL thinks it is necessary to have an evaluation. Wording of this paragraph should be in conformity with article 17 par. 2 of the present Basic Regulation.

## **Part III Conservation**

### Article 7 Types of conservation measures

- Measure (c): NL wants to know the purpose of these fleet measures. Number of vessels as such is not new, but linking these to the TAC is.
  - How does this relate to fishing shares / more market-oriented approach through introduction of concessions? It does not seem very consistent.
  - What is the baseline, point of departure for number of vessels ? (it is not defined here, in present basic regulation it seems that measure (e) provided for such a baseline)
  - What kind of measures does the COM has in mind?
  - Applicable to mixed fisheries? Which fishery will in this case be decisive?

NL suggests to go back to the wording of the text in present basic regulation (4.2.e), which seems to be better than this one.

- Measure (f): why reference to article 14? (technical measures are mentioned on several other places).  
NL proposes to delete “as referred to in article 14” as this is not clear.

Article 8 Types of technical measures

- NL would like to ask for confirmation that indeed this article offers a framework for taking spatial protection measures (area specific measures) related to the effects of fisheries on the marine environment.

Article 9 Multiannual plans

- For the moment no comments

Article 10 Objectives of multiannual plans

- For the moment no comments

Article 11 Content of multiannual plans

General

- Clarification is needed. How does this article relate to article 9?  
It would be much better to integrate article 9 and 11 . Then the (new) sequence of articles would be Article 9: objectives and Article 10; content of multiannual plans.
- Clarification is needed: How do Articles 11, 8 and 14 relate? How to secure coherence?

Specific

- Indent (a): What is definition of “marine ecosystem”? Furthermore the area where it applies to must be made clear!
- Indent (c) iii (ii sic): clarification needed on what exactly quantifiable targets are in the case of stability of catches.

- Indent (d) : not clear why we need “ clear time frames” if the objective is to reach MSY in 2015. Why do we need a phased approach? This seems contradictory to COMs own intentions.
- Indent (g): Clarification is needed on which kind of “ specific measures” are referred to here? Don’t we have them already? And is the Control Regulation also applicable here?
- Indent (e): clarification needed if this is a further elaboration of Article 14? Are there any possibilities left for taking measures on regional level “ Conservation measures” are not defined, definition needs to be included.
- “ Harvest rules” are lacking in this article. Where will they be determined then? Or not needed anymore when working with Fmsy ?
- How are bycatch species being dealt with? Do they automatically ride with the measures for target species?

Article 12 Compliance with obligations under Union environmental legislation

- Referring to article 2 and 4 this article is much too limited and does not offer an appropriate framework for integration of environmental legislation and the CFP.
- It is only in the framework of CFP that fisheries related measures can be taken. And it should be possible to take fisheries related measures not only inside BHD/WFD - protected areas but also outside these protected areas.
- Paragraph 1; [alleviate] is insufficient, stronger wording is needed here.
- NL deems this article unsatisfactory.

Article 13 Commission measures in case of a serious threat to marine biological resources

- Clarify why 15 day term is deleted from this article?
- NL proposes to maintain present procedures (article 7 of present Basic Regulation).

Article 14 Technical measures frameworks

- NL is worried about the complex approach. Technical measures are referred to in quite a number of different articles: 8, 11, 14,15, 21.
- It is unclear who will decide. Assume it will be Council and EP ? .

- Will this article replace the present Regulation on Technical Measures (850/98)?
- It says frameworks, will there be more than one?
- Indent (b); which size is referred to here? This should be absolutely clear.
- Indent (c); replace “reduce catches of unwanted marine organisms” by “reduce unwanted catches of marine organisms”.
- Indent (d): replace “stocks” by “species”.

Article 15 Obligation to land all catches

General

- Good instrument as it entails an important stimulus for more selective fishing
- But in relation to timeframe and species careful phasing needed: must be realistic/feasible
- Success of landing obligation fully depends on extend it can controlled yes or no. Therefore obligation should be for all bycatch species, not only regulated species. Must take specificities of mixed fisheries into account.
- How will it be controlled and enforced ?

Specific

- Paragraph 1: where to be recorded? Logbook?
- Indent a/b/c : what is the rationale behind timeframe / species?  
Why not stocks which are under most pressure first, something we would prefer?
- Why not introduction per group of fish stocks; flat fish, pelagic, round fish?
- Paragraph 2: terminology should be uniform. Terminology in CMO must fit with the one in the Basic Regulation, as this is leading.
- Paragraph 3 is absolutely unclear: “marketing standards for catches of fish caught in excess of fixed fishing opportunities” ??? Why is this part mentioned
- Paragraph 4: What is “full documentation”? What more could one do than at present moment (logbook)?
- Paragraph 5: superfluous because obvious
- Paragraph 6: Which international obligations are referred to here? What if there are none?

### Article 16 Fishing opportunities

- Article 20 of present basic regulation is much more clear, especially with regards to first paragraph. Why chosen for this quite vague text ?
- Paragraph 2: who can reserve these by - catch fishing opportunities? MS or Council? What is the purpose?  
What is relation with the reserve mentioned in article 29, paragraph 4 ? Should this not move there ?
- Part 4; are these the swaps as we know them at present ? If so than this must be made clear – mention time frame. Possibility to swap with 3rd countries (i.e. Norway) should also be included.  
What is relation to articles 31.2 and 32?

## **Title III Regionalisation**

### **Chapter I Multiannual plans**

- The proposal is a first modest effort to regionalize the CFP. NL deems it necessary to receive a non paper on Regionalisation from COM. NL thinks it is important that some elements related to regionalisation and discussed at the attaché meeting are taken on board also in the Basic Regulation. For example a procedure for cooperation of Member States. In this procedure the RACs, which will need a different set up, should get an important advisory role.
- The approach is not a real regional approach but an approach vis a vis each individual member state in a region. The member states have to implement the “regional” agreement into their national legislation. In view of level playing field, control and enforcement it is essential that the decisions in the region will be formalised at community level.

### Article 17 Conservation measures adopted in accordance with multiannual plans

- The availability of a non-paper from COM is essential for the understanding of this regionalisation chapter
- If the conservation measures as mentioned in par 1 are read in combination with article 7 “types of conservation measures” we have to come to the conclusion that the proposed regionalisation only concerns the technical measures and not the multiannual plans.



- The role of the RACs should be clear.

Article 18 Notification of MS conservation measures

- In anticipation of expected non-paper from COM for the moment no comments

Article 19 Assessment

- In anticipation of expected non-paper from COM for the moment no comments

Article 20 Default conservation measures adopted in the framework of multiannual plans

- In anticipation of expected non-paper from COM NL for the moment no comments except for the fact that NL does not agree with delegated act the way it is formulated here. This article should clearly reflect the comments made by the COM during the attaché meeting (delegated act decided upon in each and every multiannual plan).

## Chapter II Technical measures

Article 21 Technical measures

Same comments as under article 17.

Propose in heading “member states may be authorised to **develop** measures, in accordance...”

Article 22 Notification of MS technical measures

- In anticipation of expected non-paper from COM for the moment no comments

Article 23 Assessment

- In anticipation of expected non-paper from COM for the moment no comments

Article 24 Default measures adopted under a technical measures’ framework

- In anticipation of expected non-paper from COM for the moment no comments

## **Title IV National measures**

### Article 25 Member States' measures applicable solely to fishing vessels flying their flag

- NL proposes to maintain the existing provisions in the basic regulation (article 10)

### Article 26 Member State measures within the 12 nautical mile zone

- Clarifying question; is it correct that both in case of non-discriminatory measures as well as measures which are liable to affect fishing vessels of other member states the procedure will now be the same, namely the procedure as described in paragraph 2?
- NL proposes to maintain the existing provisions in the basic regulation (article 9)

## **Part IV ACCESS TO REOURCES**

- NL not convinced of claimed effect of such a system on reduction of capacity. Link between the two not clearly demonstrated. Additional information from COM with concrete indications of the impact on fleet capacity is necessary. In relation to this we should maintain the existing EU capacity ceilings.
- All fishing vessels (excl vessels with towed gear) <12 meter are exempted. Does this mean that there is no overcapacity in this category? Can the COM indicate how many EU vessels/capacity are exempted here?

### Article 27 Establishment of system of transferable fishing concessions

- NL is positive about a system of transferable concessions but this system should be a flexible system, where besides a general framework /number of general criteria the MS themselves can decide on the further elaboration of such a system.
- Does the system also applies on the fishing effort regime?

### Article 28 Allocation of TFCs

- Paragraph 2; not for “each stock or group of stocks” but only for stocks for which one has a substantial quota. (at the same time these are often the economically most important stocks). Not for stocks for which a member state only has a small quatum. Then the administrative burden of introducing a system of transferable fishing concessions will be exorbitantly and disproportionately high. Benefits will be low.
- Paragraph 4; replace “may be pooled” by “shall be pooled”. (See also remark under article 27 about general criteria).
- Paragraph 5,6 and 7; delete. To be decided by member states. In addition the period of 15 years in par 5 does not coincide with the 10 years of the CFP. The obligation in par 7 is very easy to circumvent.

### Article 29 Allocation of individual fishing opportunities

- Paragraph 2; delete unless it is clear that this paragraph is not applicable for all the species for which the Council has not fixed fishing opportunities
- Paragraph 3; principle supported. In case of NL system already in place for stocks which fall under the ITQ system. Flexibility for MS needed here too. Is very difficult to implement in the case of individual concessions. That’s why pooling together for collective management is necessary.
- Paragraph 4; important option for NL, very relevant for NL situation, where this option is used already. But exact percentage should be left to MS to decide. Replace “may reserve up to 5%” by “may reserve a – limited – part”.
- Paragraph 5 and 6; not necessary as it should be up to MS to decide on further elaboration of system.

### Article 30 Register of TFCs and Individual fishing opportunities

- If “register” could also be a database; no comments

### Article 31 Transfer of TFCs

- Paragraph 2; What is exactly transferred here and what stays behind? Our understanding is that the right to fish/ fishing concession can be transferred. Fishing opportunities stay where they are. In this way a fisherman from another MS obtains the right to fish the NL quota linked to this concession. This is something NL does not want. Or is it transfer of fishing opportunities? In this case relative stability is affected and this is also something NL does not want.

What is purpose of this article ? Very unclear. This part should be skipped.

### Article 32 Leasing of individual fishing opportunities

- Paragraph 2; concerns swapping ; delete (because it is already in article 16)
- Proposed change in articles 31 and 32

Distinction articles 31 and 32 is not very clear. NL of opinion that leasing, transfers etc of concessions could only take place within a MS. In between member states article 16 applies. Make concessions transferable by means of article 31 paragraph 1 and 3. By means of article 32 paragraph 1 leasing – also of concessions - can be made possible.

### Article 33 Allocation of fishing opportunities not subject to a system of transferable fishing concessions

No comments for the moment

## **Part V Management of fishing capacity**

### Article 34 Adjustment of fishing capacity

- No comments for the moment

### Article 35 Management of fishing capacity

- Paragraph 1; is referring to Annex II. In this Annex the figures are not right. Why are these figures used (31/12/2010) and not the ones from 1438/2003 (reference level “ fleet picture”) which should have been used ?
- Paragraph 2; NL has very serious concerns about this part, mainly because of undesirable effects it will have. Because potentially it will be possible to expand capacity and there is a potential risk of export of overcapacity to waters outside of the EU. Expectations COM of effect TFCs unrealistic. Information on capacity ceilings is already there, and there cannot be any objections to maintain these ceilings. Also from point of view simplification or reduction of administrative burden this is not contributing. Because we would have to keep the fleet register. Capacity ceilings must remain in force.

### Article 36 Fishing fleet registers

- For the moment no comments.

## **Part VI Science Base for Fisheries Management**

### Article 37 Data requirements for fisheries management

- NL critical about this part. As follow up of article 4b (good governance and scientific advice) quite disappointing in light of propagated science based approach. Insufficient.
- Why is data collection regulation withdrawn and replaced by only this 2 articles. Is that sensible thing to do? Are we not going to miss things?
- What will be the role of STECF ? Paragraph 6 and 7 are related to each other, NL does not agree with delegated act in paragraph 6 as this concerns further specification. We should also prevent that two narrow related issues are dealt with in two separate regulations.

### Article 38 Research programs

- This article gives the impression that the national research efforts/priorities/finance will be part of community decisions. This is a national competence. Clarification is needed.

## **Part VII External Policy**

- NL deems it necessary to specify the most important principles, some of which are mentioned in the Communication, in this Basic Regulation. Furthermore the Council Conclusions of 2004 should be revised and updated.
- NL proposes a separate “umbrella” paragraph on objectives of the EU external Policy. Presently it only focuses on RFMO’s and Fisheries Agreements, which is too limited. There are much more aspects, like UN, FAO, development, trade.  
Introductory paragraph could e.g. read something like the first bullit on page 3 of the Communication : “drive forward the global and multilateral agenda promoting sustainable fisheries worldwide while transforming its dialogues into working partnerships to address crucial issues such as eradication of illegal, unreported and unregulated (IUU) fishing or reduction of overcapacity.”

### **Title I International Fisheries Organisations**

#### Article 39 Objectives

- Issues mentioned are not objectives, so better to change title of this article from “objectives” to “international fisheries organisations”

#### Article 40 compliance with international provisions

- For the moment no comments

### **Title II Sustainable Fisheries Agreements**

#### Article 41 Principles and objectives of Sustainable Fisheries Agreements

- Paragraph 1 : at end of this paragraph add “in accordance with relevant measures adopted by international organisations dealing with fisheries, including RFMO’s”

- Include transparency clause with regards to total fishing effort, exclusivity clause and rules for (re)flagging in this article.

#### Article 42 Financial assistance

- Indent (a) : Private sector should (gradually) pay all costs of access to the fisheries resources in third countries waters
- For the moment no further comments

### **Part VIII Aquaculture**

#### Article 43 Promoting aquaculture

- NL has doubts about the added value of non binding Union strategic guidelines; also the relation with the national strategic multiannual plans is not clear

#### Article 44 Consultation of Advisory Councils

- Reference to art 53 is not correct. What is the objective of this AC and what will be the composition?

### **Part IX Common Market Organisation**

- General remark: must take care that between Basic Regulation and Common Market Organisation there are no doubles or contradictions. CMO must be well aligned to the Basic Regulation!

#### Article 45 Objectives

- CMO must refer to article 45 of the basic regulation where it concerns objectives. Same objectives must be included in CMO.
- Indent 1 (b); NL proposes alternative phrasing: “enable fishery and aquaculture industry to act in full compliance with conservation policy of the CFP”. In this way also better linkage to CMO.

- Indent 3 (a); NL not advocate of market stabilization measures. Delete.
- NL observes that consumer information is not mentioned here, which is good as it is in line with the Control Regulation. Tuning both of them is important.
- New indent 3 c) proposed: minimum requirements of eco labelling schemes.

## **Part X Control and Enforcement**

### Article 46 Objectives

- NL supports the integrated approach as mentioned in par 2 a. This integrated approach implies that all control and inspection measures should be integrated into one control regulation.

### Article 47 Pilot projects on new control technologies and data management systems

- NL is hesitant about the delegated act.

### Article 48 Contribution to control, inspection and enforcement costs

The NL does not agree with an exemption for vessels < 12 meter. The control regulation has also requirements which are applicable to vessels < 12 meters. Avoid discrimination so delete this paragraph.

## **Part XI Financial Instruments**

### Article 49 Objectives

- For the moment no comments

### Article 50 Conditions for financial assistance towards Member States

- For the moment no comments



### Article 51 Conditions for financial assistance towards operators

- By using definition “serious infringements” and subsequent link with IUU and Control Regulation this is a limited definition (in time). Additionally this only applies to supply sector, because actors in this sector are the only ones who can commit serious infringements. It excludes a group of market players who also make use of financial assistance. So this is too limited. (Same remark made when dealing with definitions)
- Par 3 refers to sanctions. What about the point system of the control regulation; Are these points considered as sanctions?

## **Part XII Advisory Councils**

### Article 52 Advisory Councils

- NL is of the opinion that it is premature to decide at this stage on a delegated act. At this stage not in favour.
- The important advising role Advisory Councils must play in the framework of Regionalisation must be made explicit
- How this part on Advisory Councils will look like in the end depends on what is discussed in the part of Regionalisation. These parts are closely linked.

### Article 53 Tasks of Advisory Councils

- Par 1: depends on the role of the RACs in the process of regionalisation
- Par 2: “a reasonable time period” is too vague and should be specified

### Article 54 Composition, functioning and funding of Advisory Councils

- RACs must be better equipped to fulfil this role.
- Not only the composition of Advisory Councils must be expanded and include also science (so an honest reflection of industry, NGO’s and science). Also they must be (financially) equipped to fulfil this task
- Composition, funding and functioning is important issue. NL not in favour of delegated act.

## **Part XIII Procedural Provisions**

### Article 55 Exercise of delegation

- Must be brought in line with horizontal agreements made about this.

### Article 56 Implementation

- No remarks

### *Review*

Like in the existing basic regulation (article 35) a review clause should be introduced

## **ANNEX II**

The capacity ceilings are not correct. See comments on article 35.

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