



**LDAC ADVICE**  
**(Re)positioning of the European Union towards the North East Atlantic  
fisheries negotiations in a post-Brexit scenario**

**16 February 2022**

**Ref.: R-11-21/WG2**

**Approved by Executive Committee by consensus**

**Rationale:**

**Developing European Union's core principles for fisheries negotiations in the North East Atlantic**

Brexit created a new situation for fisheries management in the North East Atlantic (NEA), shifting the governance framework with changes in the balance of powers and in the relative positioning of Coastal States and fishing nations. It is essential that the EU reviews with the aim to revise its own position and core principles during the bilateral, trilateral and multilateral dialogues with those Coastal States who are collectively responsible for the management of economically and ecologically important demersal and pelagic stocks in the NEA like cod, saithe, mackerel, blue whiting or Atlanto-Scandian herring, amongst others.

**Objectives**

Although this shift to a new governance paradigm is a big challenge for the EU, it needs to be seized as an opportunity for the EU for reinforcing its conservation and sustainability objectives that drive current fisheries management in North East Atlantic waters. The EU and other Parties' responsibilities for conservation and sustainable joint management of fish populations must take priority in the negotiations on fisheries because healthy stocks and fish populations are the source of viable and profitable fisheries in the medium and long term.

Taking this into account, the LDAC considers the following objectives as key and the core negotiation principles must be instrumental in reaching these:

1. To protect and strengthen the position of the EU as a fishing coastal state in the North East Atlantic which allows the EU to protect the legitimate socio-economic interests and historical rights of the EU coastal communities and their fleets active in the North East Atlantic;
2. To contribute, from a position of strength, to environmental sustainability taking into account the legitimate socio-economic and historical interest of the EU fleet, in which effective fisheries management of shared stocks in the North East Atlantic region can be developed and agreed upon based on the best available scientific advice.



## Decalogue of Core Principles

The present LDAC recommendation aims at formulating ten core principles of the EU in light of the new post-Brexit reality in the North East Atlantic and international commitments taken by both the EU and the Coastal States involved. These 10 principles should serve as the basis for setting the guidelines for the European Commission when negotiating arrangements for demersal and pelagic stocks with Coastal States and in the context of NEAFC. The principles listed below do not follow an order of priority:

1. **Science-based management:** Fisheries management must be based on the best available scientific advice and the EU should endeavour, in collaboration with the other Coastal States, to develop agreed Long Term Management Strategies that factor in ecosystem and climate considerations for the fisheries on shared stocks.
2. **Implementing a precautionary approach:** As defined by the United Nations Fish Stock Agreement<sup>1</sup> (UNFSA, 1995), when the available data and information are uncertain, unreliable or inadequate, decision makers should engage in more cautious management, and a lack of scientific certainty cannot preclude management action. Similarly, the failure to agree relative shares in pelagic fisheries, and resulting overfishing, demands a more precautionary approach to TAC-setting. However, any TAC setting decision must be made on a multilateral basis and binding to all parties concerned ensuring level playing field and avoiding unilateral action from other countries.
3. **Implementing an ecosystem-focused approach:** In addition to maximising long-term sustainable yields, the EU must cooperate with other Coastal States to conserve biodiversity and ecosystem health, considering the impact of fishing activity on both fish populations and on the whole ecosystem. Likewise, environmental pressures, such as climate change, that account for changes in the state of the ecosystem must be explicitly addressed as they have a direct impact on the distribution of fish populations and on their management.
4. **Multi-annual management** should be the underlying principle by default. Although details will need to be revisited regularly, all stakeholders benefit from agreeing to and working toward long-term sustainable management objectives. That includes stable sharing arrangements, long-term management strategies that include harvest control rules for setting catch limits, a robust monitoring and evaluation scheme, a periodic review process, and any necessary mechanisms to transition from previous arrangements to a new system.
5. **Participation of all stakeholders and transparency of decision-making:** The EU should convince other Coastal States to make the current Coastal States negotiations process more inclusive and transparent.

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<sup>1</sup> [UN, Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks](#)



The process should be consistent with the obligations and rights under the [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#)<sup>2</sup> (Aarhus Convention, 1998). Management proposals, negotiations and decisions should be made transparent, with access guaranteed for all stakeholders, including the fishing industry, civil society organisations and other interested parties. In addition, citizens of the EU and of other Coastal States involved must be able to scrutinise management decisions.

The joint management measures, the scientific advice underpinning them and the positions of the different parties involved must be made available and actively disseminated to those interested in reviewing them.

## **6. Role of the Council of the European Union**

6.1. The EU should seek to redefine the mandates given by the Council to the European Commission for all North East Atlantic Coastal States' negotiations taking into account the lessons learned from the Brexit negotiations.

6.2. The Council should be more involved in the preparation, formulation and approval of fisheries negotiations in the NEA context. Therefore, it would be advisable for the Council to provide a higher level of detail in the mandate. Likewise, the Council should play a more proactive role in monitoring and supervising the negotiation process conducted by the European Commission in accordance with the mandate but understanding the dynamic nature of negotiations.

## **7. Linkage to market**

7.1. The EU must ensure that fisheries negotiations with other Coastal States in the North East Atlantic - bilateral or multilateral - are not taken as a stand-alone exercise. Implicitly and explicitly, the EU should make it clear that fisheries negotiations with the other Coastal States have to be seen as directly and consequently linked to the wider negotiations on trade and market access.

7.2. The EU is globally the largest and most attractive import market of seafood and must use its market strength to protect the interests of its fishing fleet and to prevent and deter Coastal States from breaching their commitments or agreements.

7.3. Link to EEA Agreements:

The Financial Mechanism for the EEA has traditionally separated market access from access to fish resources and fishing grounds.

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<sup>2</sup> [UNECE, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters \(Aarhus Convention, 1998\)](#)



However, as constantly and successfully been argued by the European Union during the Brexit negotiations, trade agreements with neighbouring third countries must have a direct link with negotiations on fisheries access, and therefore cannot be disconnected. This is based on the principle of reciprocity in international relations and treaties. Fisheries must therefore be placed more centrally in the EEA Financial Mechanism and implementing Protocols since its role and presence is almost negligible under the current mandates.

## **8. Level playing field**

8.1. The EU should seek a level playing field between the EU fishing industry and the fishing industry of the other Coastal States in the management of NE Atlantic fisheries, in particular in terms of non-discriminatory treatment in fisheries management and in terms of investment/foreign ownership opportunities. The EU can use its market power to influence this process.

8.2. The EU must work on reciprocal free access to waters, ports, business ownership, investments and services based on the principle of reciprocity enshrined in international relations and treaties. At this moment EU nationals can only own a minority share in a fishing company in Norway, Faroe Islands and Iceland, whereas a Norwegian, Faroe or Icelandic national can fully own EU fishing companies. Such imbalanced situations must not be allowed anymore. Furthermore, the EU must prevent any asymmetric situation leading to discriminatory cases such as economic link requirements for foreign owned vessels.

8.3. In addition, fishing vessels operating in the same area should be subject to similar rules and conditions, irrespective of the flag they fly, such as the different technical measures applicable in UK and EU waters. As a different example, EU control rules will not apply to UK vessels operating in EU waters, including penalty points.

## **9. Dispute and conflict resolution**

In order to provide legal certainty to EU operators, prevent discrimination and to secure the overall credibility of fisheries agreements, the EU must put in place a fully-fledged system for dispute and conflict resolution, including the option of remedial and retaliatory measures. The EU must adopt an internal Protocol with a 'menu' of possible measures to swiftly and strongly address questions and scenarios such as the current appropriation of Arctic cod caught in Svalbard by Norway or the unilateral quota increase of mackerel by Coastal States threatening the state of the stock. In order to be credible and respected, it is fundamental that Coastal States are aware that the EU shall use remedial and retaliatory measures in case of grievance against the EU interests. This Protocol should be used as a default system that should operate to complement the ad hoc measures established in the different international instruments or trade agreements (WTO, EEA agreement Protocol 9 or the TCA).



## **10. Better coordination of European Commission to fulfil its mandate on fisheries negotiations in the North East Atlantic context**

10.1. We are pleased to see that a new Unit (C5) has been created within DG MARE under Directorate C to deal with management of fisheries shared with the UK, Norway and other Coastal States, while continuing with the figure of a principal advisor to deal with Northern Fisheries agreements directly accountable to the Director General. It will be key that both the unit has clear objectives, structure and delimitation of competences to issue coherent positions for North East Atlantic affairs with other DG MARE units that would coordinate and negotiate the relevant SFPAs (Greenland), Coastal States and RFMO negotiations of the North Sea and North East Atlantic complex. It is also fundamental that this new Unit and Directorate C as a whole contributes to ensuring better coordination between fisheries, foreign affairs and trade aspects and with other relevant DGs.

10.2. In terms of management of shared stocks, it must be noted that with the UK's departure from the EU, the number of TACs solely managed by the EU in the Atlantic, Baltic Sea and Skagerrak/Kattegat shrank drastically to only 35 TACs (10 in the Baltic, 4 in the Skagerrak/Kattegat and 21 in the Atlantic). Against this background, the EU does not have the same weight in the North East Atlantic both in terms of the size of its EEZ and quota allocations for shared stocks. Therefore, the EU and future fisheries negotiations are strongly conditioned by and subject to the decisions taken by the other Coastal States. In light of the new situation, there will be a need to find new ground rules for the consultation process both amongst concerned MS within the EU, the EU itself in its relation with other Coastal States, and input and participation from legitimate stakeholders, including the relevant Advisory Councils.

**END**