

DRAFT REPORT

LDAC WORKSHOP ON IMPACT OF BREXIT PROCESS IN THE COMPOSITION AND FUNCTIONING OF THE ADVISORY COUNCILS

NH Eurobuilding Hotel, Madrid, 4 December 2018

Welcome – Setting the scene: objectives of the meeting

The Chair Iván López opened the session welcoming all attendees to Madrid on behalf of the LDAC. He also thanked the Joint NWWAC-PELAC-LDAC Steering Committee for their work over the last months to get this meeting set to go.

Regarding the terms of reference, the aim of this meeting is to analyse the current functioning of the ACs in light of the current legislative framework as well as identifying possible future structures for the ACs such that they remain influential and ensure the continued involvement both of UK and EU stakeholders in decision-making process on fisheries management for shared stocks in a post Brexit scenario.

The ideas discussed and/or agreed below might serve as basis either to develop a common position or inform future debates amongst the ACs for enhancing the role and tasks of the ACs in the future process linked to the CFP Reform, subject to how negotiations with the UK evolve.

In particular, the following questions have been circulated in a concept note (appended), and will be tabled in the open debate time after the presentations.

1. *What would be the core functions and competencies of the Advisory Councils in a post-Brexit scenario? Definition of key areas in preparation of the future reform of the CFP*
2. *Is the current setup of the ACs (structure) fit for purpose, adequate and relevant for a post-Brexit?*
3. *What will be the role and status of UK stakeholders in the ACs?*
4. *How the future ACs should look like in a post-Brexit scenario?*

Link to Concept Note for the meeting:

<http://ldac.ldac.eu/attachment/3e5f759c-091f-4f19-aa19-b5575d1863d6>

Keynote speech: Overview and update by European Commission (DGMARE)

The DG MARE representative, Mr. Joost Paardekooper, conveyed his apologies on behalf of the Director General Mr Aguiar Machado who has a previously acquired commitment. Mr Paardekooper supported the organisation of this meeting as ACs participation and input is important for this process.

1. Context of negotiations

The UK activated article 50 of the EU Treaty and will leave the EU on 29 March 2019 and will become an independent Coastal State. A withdrawal agreement was recently signed between the EU and UK, and was jointly presented by the UK Prime Minister, Ms. Theresa May, and the Chief Negotiator of the EU, Mr Michel Barnier. It was subsequently tabled and endorsed by the Heads of Government in the Council a couple of weeks ago.

Now it is currently being discussed at UK Parliament.

If the withdrawal agreement is ratified, the UK will enter into a **transitional period** which is intended to run from the 30 March 2019 until the 31/12/2020. This means that the UK will have to be bound and live up under the obligations of the *acquis communautaire* including the Common Fisheries Policy. This will guarantee to EU27 vessels access to UK waters, its allocated resources and quota shares.

The UK would discontinue to be at the Council of Ministers for the setting of fishing opportunities (TAC and quotas) for 2019 and 2020. Specific mechanisms of consultation will be applied for the setting of the TACs and quotas for 2020.

In terms of the CFP external dimension, the UK would not be considered as a separate party in international negotiations in RFMOs for 2019 and 2020. However, it must submit a specific request to be part of the EU delegation on the consultations leading to Coastal States negotiations in the North East Atlantic, as well as terms for bilateral consultations between the EU and Norway. The UK will not be entitled to participate at the Council Working Party discussions during the transition period.

2. Overview of withdrawal agreement and future scenarios

There is still no certainty on what the future will look like. UK shares with EU around 140 TACs on stocks subject to catch limits. Around 100 of these stocks are mainly bilateral and are caught in EU27 waters. Emphasis and efforts for the future must be placed therefore on the formulation of joint management and cooperation mechanisms for the sustainable exploitation of the resources.

Negotiators from both parties have already looked into possible scenarios and developed a set of elements that are included in the Political Declaration adopted and which is appended to the withdrawal agreement.

Under UNCLOS the two parties will have to cooperate bilaterally in cooperation agreements, and the aim is to negotiate a new fisheries agreement including access to waters and quota shares. Necessary measures will need to be developed to make sure it is done on a sustainable manner. For this reason, the transition period is very important in allowing time for achieving a common vision. Best endeavours will be made to make sure that the future fisheries agreement between the EU and UK is in place in a timely fashion to work on the basis of starting the 1st of January of 2021 unless the transition period is extended.

To this purpose, a draft agreement will need to be finalised by mid-2020 to allow sufficient time for ratification by both the UK and the EU (Council of Ministers of the EU, and consent by European Parliament). Negotiations will start as soon as the withdrawal agreement is ratified.

The UK White Paper and the UK Fisheries Bill are regarded by the EU as a positive basis for mutual cooperation and understanding for a sound management of the shared stocks.

Regarding the challenges for EU stakeholders' dialogue and involvement in decision making process, Mr Paardekooper encourages the ACs to come up with proposals and possible solutions on their own composition, organisation and functioning, which is the reason of organising this meeting today.

The LDAC Chair thanked the comprehensive summary made by the DG MARE representative and reiterates the will of the ACs to provide their constructive input and remain lined up to their role within the internal dynamics of the EU. However, it is likely that some ACs might need to change its remit of work or competencies or be reshaped, so we need to reflect on alternative scenarios.

To frame the debate, Mr López asked to the attendees to deal with the questions contained in the concept note aforementioned and also elaborate on others to be dealt with tentatively:

- Is there still a role for the ACs in that future process? If so, what would be the dynamics?
- Is it possible to continue working like today?
- If not, what will be the differentiation needed in terms of remit and role?
- Can solutions be found at operational level through adaptive adjustments or will there be need for structural change of the whole setup of the ACs?
- The most concerned ACs by the Brexit are the North Sea, the North Western Waters, the Pelagic and the Long Distance ACs... should they be given the mandate to coordinate their input in order to produce a single consolidated advice or each AC might have different approaches?

What will be the impact of Brexit in decision-making for fisheries stakeholders? Reflections on mechanisms for participatory governance in post-Brexit scenario:

NGO perspective - Melissa Moore (OCEANA)

Ms. Moore introduced to the audience the work priorities of the NGO coalition “Greener UK” to achieve a sustainable management of fish stocks in a post Brexit scenario rooted in science (MSY, PA Framework...). This is included in the UK White Paper but they are still concerned on how is it going to be implemented and if there will be a real duty to take decisions underpinned by science similarly as in the EU.

She reminded that fisheries management in UK should be coherent with the international environmental legislation. The coalition advocates for full documentation of catches through VMS, observers at sea, CCTV, VMS... Regarding access to UK waters by EU vessels, this should be contingent on complying with the same standards applicable to UK boats.

Regarding the idea of participatory Governance in the “post Brexit” UK, Greener UK would like to have a formal consultation procedure with the existence of a fully-fledged stakeholders’ consultative body, with an adequate balance between fishing industry and other groups of interest.

Talking on behalf of the NGOs which are members of and involved in the work of the LDAC, they encouraged participation of UK experts as active observers (at minimum) in this AC. UK reps could also be invited as experts like other third countries.

Regarding the role of the LDAC specifically, it has led the advisory work on the adoption and implementation of the Regulation on Sustainable Management of the External Fishing Fleets (SMEFF, ex FAR) and the NGOs wish that the UK abide by this Regulation as well as requirement for its distant water fishing vessels in the fisheries agreements.

It is the views of the NGOs that the LDAC is expected to play a significant role in the future EU-UK access agreement as competent advisory body dealing with shared stocks between EU and third countries through SFPAs.

Link to Miss Moore’s Presentation:

<http://ldac.ldac.eu/attachment/0aec22a9-f530-44ec-9774-b7b02f45b899>

UK industry perspective: views from Scottish pelagic fleet - Ian Gatt (SPFA)

Mr Gatt provided his personal views, as member of several ACs for many years and former Chair of the Pelagic AC, and also those of the Scottish pelagic industry on how the Scottish/UK representatives have interacted with ACs and shared some reflections on what ACs do best in terms of their performance as stakeholder-led fisheries consultation bodies, with specific focus on the North East Atlantic waters including both EU waters and NEAFC.

He acknowledged that Brexit will certainly change the whole fishery landscape, while assuring a strong commitment from the UK pelagic fleet representatives to work closely with its EU counterparts to achieve a sustainable management of shared stocks.

He reminded that UK organisations played a key role in establishment of ACs and they have been since then quite active and engaged enthusiastically in several ACs within their remit of interest and activity, such as the North Sea, the North Western Waters, the Long Distance Fleet, and the Pelagic Stocks. They remain fully committed to work with ACs until they are no longer eligible to be members.

ACs might be different in their workload priorities and topics related to production of advice. Some remarkable examples are NWWAC advice on TACs, the LDAC recommendations to inform the EC on NAFO Annual Meeting, or the PELAC work on development of multiannual management plans for pelagic stocks such as blue whiting or mackerel and its science-based approach.

Regarding the future status of UK in ACs, some discussion has taken place regarding considering inviting UK stakeholders to attend ACs after Brexit as observers. Perhaps there will be a need to split content of AC meetings in two parts, namely: 1. Internal EU affairs; and 2. Common interest issues.

Regarding UK Fisheries Consultation Bodies, in Scotland there is a consultative body called Fisheries Management and Conservation Group (FMAC) integrated by industry, NGOs, and with the participation of Marine Scotland (both policy and science). This organization meets bi annually and was set up when the Cod recovery plan was implemented in 2006 and it could be strengthened on a post Brexit scenario. A similar structure may also exist in England. They might evolve into a "UK AC", providing a structure to meet with EU ACs, but that is for the future.

More info on FMAC:

<https://www2.gov.scot/Topics/marine/Sea-Fisheries/engagement/FMAC>

There is also international Pelagic Industry collaboration in the North East Atlantic that has improved in recent years. Brexit could be an opportunity to build on this collaboration and create a North East Atlantic Pelagic Forum to discuss common issues.

The EU industry is already engaged in several scientific projects (including some with Norway) and also work on certification schemes/MSC. The EU, Norwegian, Faroese and Icelandic pelagic industries have met on two successive years with the aim of working on joint action plan including harmonization of fishery conditions and a route map. Also, in the past there had been a proposal to create an Industry Committee under the auspices of NEAFC, which has not succeeded due to opposition by Secretariat and some CPCs.

Finally, regarding the role of the LDAC, it will likely have a key role in any future EU-UK access agreement dealing with shared fish stocks. Also on the work to implement the new EU Regulation on Sustainable Management of the External Fishing Fleet (SMEFF) and specific requirements that UK will carry over on this.

Link to Mr Gatt's Presentation:

<http://ldac.ldac.eu/attachment/413c512b-510a-4a9c-b921-36f48e8d256f>

EU industry perspective – Gerard van Balsfoort (Chair of EUFA)

Mr Van Balsfoort spoke as Chair of the European Fisheries Alliance (EUFA), an organization set up after the beginning of the negotiations between the EU and UK on a future withdrawal agreement. EUFA has already produced several position papers that are accessible here: <https://fisheriesalliance.eu>

Remarkably fisheries has been since the outset at the heart of the negotiations and a short term deal seems quite difficult to achieve due to the complexity and high profile of this dossier. The core message of EUFA from the outset is that fisheries must be well managed under sustainable criteria to avoid overexploitation or collapse of the stocks.

Regarding pelagic stocks, the EU pelagic industry sees an opportunity to reopen discussion on allocation keys in the NEA by working through improved mechanisms of dialogue and consultation between key EU industry stakeholders and concerned Coastal States. NEAFC would be a good forum for this.

The ACs are significantly different and cover diverse geographical remits and species. Some are more scientific based, some more political, with many placing somewhere in between. The Brexit will likely bring a substantial change of mindsets in terms of ACs working. This meeting is useful to reflect on alignment of objectives, on how we could position ourselves for the next CFP, and how to ensure we provide our acquired experience on stakeholder driven consultation processes with UK.

How Brexit process might affect the work of the Advisory Councils? Report by the Chairs on key issues for the ACs:

Market AC – Guus Pastoor (Chair)

Mr Pastoor explained that the MAC has only discussed this item briefly, and no decision has been taken yet regarding a common position. He reminded that they have a horizontal and not a regional structure, dealing with market issues and composed by members of all the fisheries value chain, including catching, processing and trading sectors. They are organized within 3 Working Groups, dealing with production and marketing plans; market/trade issues; control and sanitary issues; and consumer rules. More info: www.marketac.eu

Over 60% of the fish supply to the EU market comes from imports so when the UK will be out of the EU this ratio will increase. A socio-economic dimension needs to be considered in the equation and UK organisations role in the ACs should be thought carefully, considering it they would be interested in participating in observer capacity. He strongly believes that an EU forum for stakeholder advice for markets like the MAC should remain post Brexit to cope with these issues.

Aquaculture AC – Javier Ojeda (Acting Chair)

The Aquaculture Advisory Council (AAC) is a balanced stakeholder representative organisation created for consultation on elements of Union policies which could affect aquaculture under Articles 34 and 44 of Regulation (EU) No 1380/2013.

The AAC is composed of representatives from the industry and other stakeholders, with a 60% -40% allocation of the seats in the general assembly and the executive committee (Ex. Com).

The Assembly and Ex. Com are guided by the advice generated by three working groups. The Working Group 1 focuses on Finfish, the Working Group 2 on Shellfish and the Working Group 3 on Horizontal issues.

They look mainly at issues related to legislation, health of fish stocks in farms and environmental aspects. He states that the current UK members wish to maintain their presence and input at the AAC during the transitional period.

More info: <https://www.aac-europe.org/>

Perspective from South Western Waters AC – Sergio López

Mr López agrees on the importance to reflect on the future setup, structure and functioning of the Advisory Councils. There is a concern from the fishing sector of the SWWAC in effort displacements or changes in fishing patterns as a result of any changes in management of fish stocks or access to UK waters in the post Brexit. More info: <http://cc-sud.eu/>

North Sea AC – Niels Wichman (Chair)

Mr Wichman organized its presentation in three parts:

1. Background of NSAC: it was created in 2004, and before there was already an existing stakeholder structure called the North Sea Partnership, which included also Norwegian industry representatives.
2. How we are affected by Brexit as it is? In terms of regionalisation, the Scheveningen Group of Member States in the North Sea is already discussing how to dealing with possible scenarios post Brexit. For this reason, the NSAC has established a Brexit Focus Group to respond to this challenge and exchange views with the European Commission.
3. Future structure: The NSAC and many ACs in the EU which will need a change in their structure and we need to think on future forms. The UK should logically also establish their own ACs. The question would be do we want formal structure between these two or informal structure? There seems to be a mixed message from the floor and the NSAC is considering developing their own reflections within their Focus Group.

More info: <http://nsrac.org>

North Western Waters AC – Emiel Brouckaert (Chair)

Mr Brouckaert explained that the NWWAC work is within ICES Divisions VI and VII and is divided in four Working groups, namely West of Scotland; Celtic Seas; Channel; and Irish Sea. The NWWAC has currently 62 member organisations of which 12 are from UK (more than 20%). They deal with 27 stocks that are all shared with UK.

Regarding the Brexit, they have still not reached a common view, but they do agree on the need of ensuring sustainable and responsible management of shared stocks. Brexit will bring uncertainty regarding a number of important issues such as methodology and scientific bodies for stocks assessment, adoption or changes to technical measures (TCMs), development and implementation of multiannual management plans (MAMPs), etc.

About the NWWAC Structure, it remains to be seen if the legal status will change and if the current structures of WGs and ExCom will remain valid (including composition by nationalities) or if there will be interaction with other ACs.

In terms of present work in line with regionalisation, they provide ongoing advice and input to the NWW Member States Group on discard and management plans for the waters within their remit.

More info: <http://www.nwwac.org/>

Pelagic AC – Jesper Raakjaer (Chair)

The PELAC will undoubtedly be one of the ACs heavily impacted by the Brexit process. There are 11 out of the 12 discrete pelagic stocks within the remit of the PELAC that are shared with the UK, and collaboration mechanisms will be required in areas such as scientific based advice, MAMP strategies, data collection, etc. If there is no arrangement in place or UK is not involved in this work the PELAC might become irrelevant in the medium term.

Some possible future models have been already investigated and proposed here to expand from the current forum to supra-regional level including third country stakeholders:

1. Pelagic Forum: Keep current PELAC structure and create umbrella organisation with non-EU stakeholders which meets 2-3 times a year to discuss scientific research and shared management of pelagic stocks
2. Reshaping Working groups: Redefine/restructure existing PELAC working groups: - Some WGs deal with particular stocks to develop shared management strategies, open to all countries - Other WGs deal with EU policies or non-shared stocks, exclusively open to EU stakeholders
3. NEAFC- AC Advisory Council comprising all coastal states for most important widely distributed stocks: E.g. NEA mackerel, NS herring, Atlanto-Scandic herring, blue whiting

Given that geographical remit of the ACs will not be fit for purpose after Brexit, many ACs setup will likely suffer significant changes in their structure and working practices, as well as in their relationship with UK. Perhaps a newly created entity might be required for the NEA, to be embedded within NEAFC.

Link to Mr Raakjaer's presentation:

<http://ldac.ldac.eu/attachment/d12cb3a0-d490-4fac-950d-232be2a0002f>

More info about PELAC: <https://www.pelagic-ac.org/>

Perspectives by Long Distance Fleet outside EU waters AC – Iván López (Chair)

Mr López agreed with previous AC Chairs and highlighted that “business as usual” for the ACs will be no longer valid after Brexit. A transition phase will be required ensuring that relevant and concerned fisheries stakeholders all have a voice. UK is a fundamental part of the external fleet and in the LDAC they are good collaborators in providing unified advice in NAFO and NEAFC.

The ACs should reflect on a common structure to be able to provide and channel EU stakeholders 'advice to the European Commission in the negotiation process with UK in those areas affecting them. An important question to make ourselves would be how we could accommodate UK stakeholders in the non-confidential issues related to EU consultative process, and the other way round, how the UK would accommodate EU stakeholders in their consultations for shared stocks within UK created ACs. It is clear that it has to be a process based on parity and reciprocity in order to build mutual trust. The future CFP reform will likely change and adjust the current structure of ACs, which has been relatively stable since its creation.

More info: <http://ldac.eu/>

Open discussion and questions from the floor

The LDAC Executive Secretary, Alexandre Rodriguez, summarised the concept note before opening the floor for debate.

Link:

<http://ldac.ldac.eu/attachment/aa506dde-73ab-4449-9ca5-f4330922a936>

Sean O'Donoghue, on behalf of the PELAC, agreed with Jesper that PELAC will not work as such in a post Brexit, and we need to look at what the options are. A clear advisory structure is needed within the EU for a partnership approach with UK on stakeholders' advice. He proposed the idea of merging or joining some ACs, and creating a separate body to deal with widely distributed and pelagic stocks.

The EC representative replied that during the transition period UK cannot have a say in decision making within the EU. Given the uncertainty at this point, the ACs are encouraged to continue working under their current advisory structures until there is a clear understanding of the implications and impact of the Brexit. The task force of negotiators should work on that once the UK is ready to endorse the proposed withdrawal agreement.

Melissa Moore, on behalf of OCEANA, asked the EC if UK has informed the EU negotiators on proposals for future structure or setup of UK ACs? This idea is reflected in the UK Fisheries White Paper.

The EC representative replied that there are no indications neither through formal nor informal channels.

Mike Park, on behalf of the Scottish White Fish Producers' Association, reflected on the difference between holding informal discussions versus formal negotiations. It is difficult to envisage an EU advisory body without the presence of UK representatives.

Informal discussions will likely take place and be required to iron out possible differences in terms of negotiations and positions by the EU and UK in international fora where they will participate as CPs, such as RFMOs (NEAFC being an example). Formal collaboration should be articulated within topics of common interest, such as management of shared stocks within EU and UK waters exclusively.

The EC representative replied that it is difficult at this stage to conceive the situation where an umbrella organization for ACs is created. In terms of bilateral negotiations on shared stocks, the EU has already a clear legal framework in terms of negotiation, adoption and implementation of fisheries partnership agreements with third country, for example setting up joint scientific committees for data collection and stock assessment.

It is likely also that Mixed Committees to deal with and monitoring implementation issues related to the agreement might find use in receiving input from designated stakeholders.

Richard Sterneberg, on behalf of EUFA, pointed out the Opinion of the ECJ Advocate on the eventuality of a “hard Brexit” or unilateral withdraw from UK without withdrawal agreement in application of article 50. The vote of the UK Parliament (House of Commons) will be decisive in this sense.

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AFTERNOON SESSION

How should the AC’s look like in a post-Brexit scenario? Summary of recommendations or take away messages

The Chair of the meeting, Mr Iván López, presented the joint work of the AC Chairs coordinated by the LDAC Secretary to come up with some common ideas and suggestions for conclusions of this meeting.

The recommendations were discussed and agreed by all AC Chairs and are presented below assuming the transitional period scenario.

- Legal Clarification is required and also desired flexibility on the functioning of the ACs (CFP Regulation)
- AC Structure/setup split between “*business as usual*” and advice on “*negotiations*” – Reciprocity on consultations on both EU-UK stakeholders bodies (define/extent of topics)?
- What does the EC/EU27 expect from the ACs? • One/many advice on negotiations?
 - Joint Advisory structure/setup agreed by negotiators for the fisheries agreement
 - How to deal with UK representatives (members/observers)?
 - Other issues of interest

Mr López opened the floor for comments and asked participants to manifest if they would endorse them.

Gerard Van Balsfoort supported the route map/way forward proposed and advised to wait until the vote of the UK Parliament takes place.

The designated steering group will need to think on how we can deal with at each ACs and from our own perspective (e.g. pelagic industry...).

Sean O’Donoghue agreed with the conclusions presented and highlighted the importance of the legal clarification from the Commission regarding the extent and scope of arts 41-43 combined with Annex III of current CFP Regulation.

The EC representative made it clear that there is no chance for changing the current EC delegated act laying down detailed rules on the functioning of the Advisory Councils, in accordance with articles 45.4 and 46 of CFP regulation 1380/2013. Nothing will happen at this stage, when there is still no clarity on the withdrawal agreement and transition. Nor is there an intention to work on a review or reform of the CFP during the Brexit process.

The Chair thanked all participants for their attendance and participation, the interpreters for their good work and the steering committee and the LDAC Secretariat for the success in the preparation of this meeting.

He declared the meeting adjourned at 15h.

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