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THE ROLE OF ADVISORY COUNCILS IN THE NEW REGIONALISED CFP
The involvement of Advisory Councils in fisheries management

The role of Advisory Councils in the regionalisation procedure

As it is well known, regionalization is among the key pillars of the recent CFP reform, along with the achievement of MSY for all stocks by 2020 through MAPs and the introduction of the LO.

This innovation implies both the recognition of the existence of local conditions and specific characters that may justify MS proposals and a new opportunity for them to cooperate in tackling technical and management issues in the areas where their fleets operate and/or on shared stocks.

Until the reform, the acknowledgment of local specific characters and the consequent Member States' requests for derogations from the existing Regulations had hardly the potential to break into the negative EC position, and the MSs handled their problems individually, without any collaboration between them.

The EC power of proposal is therefore complemented by the possibility for MSs to jointly submit recommendations and proposals both in the case of delegated acts (LO MPs) and in the case of co-decision procedure (MAPs), even if in the latter case, in unclear terms. What makes the proposals considerably more attractive, placing them in a "privileged" lane in the Communitarian legislative procedures (conditioned however on the eligibility of having solid scientific basis) is precisely the concept of regionalization, that is their joint presentation by several MS under Article 18 of the Basic Regulation.

In this framework was added, innovation into innovation - the role of the advisory system, which in turn, had undergone a small Copernican revolution over the years, from the Centralized Advisory Council - composed of representatives of European stakeholders' organizations - to the Regional Advisory Councils (RACs) composed of both European and national organizations with 2/3 of representatives from the professional fisheries sector and 1/3 representing other stakeholders such as NGOs, consumers, recreational fishermen, etc. With the reform, RACs evolved into ACs, with a modified composition of the two components: 60 and 40% and a substantially modified mission.

From a "trade union" place, in which the EU institutions could simply record the views of the stakeholders who spoke on any current topic (without any obligation to consult or even less to reply) to the forum for the drawing and the proposal, envisaged in the decision-making process (with obligation of consultation and response: Art. 6,14,20,27,44 of Reg. 1380/2013) on the basis of annual programs agreed with the EC. The consultation, first considered centrally and then regionally as an "optional" in the decision-making process, became one of its intrinsic factor, with a structural passage that can help to make it, if really and properly practiced, more "bottom-up". In this context,

consultation was also extended to the MSs who, by participating in ACs, are practicing a new form of relationship and dialogue between national Administrations and the Commission while, at the same time, making the Advisory Councils direct interlocutors for MSs.

One of the areas in which this is particularly relevant is the regionalization under Article 18 of the Basic Regulation, in which the paragraph 1 in particular states that MSs may “ ... *submit joint recommendations for achieving the objectives of the relevant Union conservation measures, the multiannual plans or specific discards plans* » to be adopted in accordance with Article 15, and paragraph 2 that « *They (MSs) shall also consult the relevant Advisory Councils* ».

Under Article 44 of the same Regulation, the tasks of the Advisory Councils are stated. In particular, paragraph 3 states that “*Advisory Councils shall be consulted on joint recommendations pursuant to Article 18. (...). Their advice shall be taken into account. Those consultations shall be without prejudice to the consultation of STECF or other scientific bodies. The opinions of the Advisory Councils may be submitted to all Member States concerned and to the Commission*”. Referred to paragraph 4, moreover “*the Commission and, where relevant, the Member State concerned shall reply within two months to any recommendation, suggestion or information received (...). Where the final measures that are adopted diverge from the Advisory Councils' opinions, recommendations and suggestions received (...), the Commission or the Member State concerned shall state detailed reasons for the divergence.*”

Article 45 specifies the composition, functioning and funding of Advisory Councils, in particular it provides for the setting-up of “*working groups to deal with issues of regional cooperation pursuant to Article 18 (...)*”

In regionalization, therefore, the Advisory Councils are actors provided for in the procedure, active both towards the EC and towards the MS, structured and equipped to play their role and contribute. We should see now how this innovation made by the reform can be best used and enhanced in order that it can result positive and functional in achieving the goals of the CFP.

It is clear that what the Basic Regulation provides may be translated into concrete in several ways:

- from a strictly bureaucratic approach where ACs are limited to an exchange of formal communications,
- to the beginning of a virtuous process in which ACs become pro-active in regionalized proposals, present them to MSs who participate in the works of the Councils with their Administrations and when they verify their agreement on the proposal, they present it to the EC.

The difference between these two extreme cases may depend on several factors: the ACs themselves do not succeed in making proposals with the necessary consent of their members, because of internal problems (no consensus/lack of consensus between different types of stakeholders and / or among members of the countries concerned), the MSs that, despite the

proposals of the ACs, are not involved or have difficulty in finding any agreement between them or European institutions that do not accompany the process.

We must first consider that we are faced with two distinct cases, limited to the main ones, on which we have already had some experience.

The first is that one of DMPs, which, being within the EC's competence (which proceeds on this matter by delegated acts unless the EP's opinion is opposed) has an easier path. In this case, the activation of ACs, not to be consulted, but to draft a proposal to MSs involved, is essential. This is the case where the best results have been recorded: pressing of the EC on MSs and AC, drafting of a proposal by the AC to MS (with the benevolent help of some scientific institutes that ACs cannot reward), activation of MSs DG Fisheries receiving the formal proposal and presentation to the EC (even with partial amendments to what the AC has proposed). Consultation of STECF, EC delegated act, publication on EU GU: 6-10 months. ACs were starter and catalysts of this procedure.

The second is that of MMPs. In this case, the power of the proposal is exclusively of the EC, which shall consult the ACs, the EESC, the MSs etc. After the consultations, the EC formulates the proposal for a regulation and put it on the way of codecision through the trialogue. In this case, the ACs are only actually consulted and they produce their opinion / proposal / recommendation that the EC should take into account, and should transpose some indications (if it does not accept anything for divergence of views, it should explain in detail the reasons to the relevant AC under Reg. 1380/2013).

However, considering that the possible AC's proposal, when they are able to formulate it, is technical-managerial and stems from a consultation between stakeholders of the MSs involved (as well as among the various types of stakeholders in the AC), and it is formulated taking into account the state of resources according to STECF data, the acceptability of measures, the socio-economic impacts on companies and employment, the market and so on, while the EC proposal for a regulation is normally and largely based on the STECF scientific opinion (which however indicates a different target and different scenarios depending on the time to reach it and it does not say how to reach it), it is obvious that here the virtuous process, above imagined, can be complicated and cracking until jammed, and that the parliamentary passage and the trialogue become the essential juncture.

In the scenario of MMPs, it is not laid down clearly at which stage of the procedure, the regionalized proposals that the MSs can present on the basis of the AC proposals could be considered: during the consultation with the ACs before the draft regulation (but it would not be a proposal formally submitted by MSs) or in the trialogue? (which, however, occurs the EC proposal having been formulated, and therefore after the AC proposal has been accepted, partially accepted or rejected).

In other cases, as it might be the case for regionalized proposals for technical measures once the reform has been launched with the approval of the new regulation, it is not equally clear what ACs

and MSs will be able to do in the formulation of regionalized proposals for measures that recognize local specificities, especially if these must be linked to the MMPs mentioned above.

Moreover, it is also questionable to make an agreement between MSs mandatory when it comes to technical measures relating to local conditions which are unlikely to concern more than one MS. The risks of renationalisation of fisheries policy, considered as Community hyper-regulation, seems a far-off spectrum that some local measure could not even evoke.

In conclusion, the great opportunities of regionalization that the reform has offered are now struggling with procedural mechanisms that can give them all beneficial effects imagined by legislators, but also jam and frustrate the attempts to apply because of the lengthy and bureaucratic constraints.

ACs can operate as catalysts and accelerators of the new system, but subject to their effective utilization and enhancement, leaving the traditional dialogue and disputes between scientific opinions on the one hand and industry resistances to accept further limitations of the activities on the other hand.

As the general objective of protecting stocks is depending on appropriate measures and compliance with the rules, the ground of negotiation and synthesis created by the establishment of ACs can now be a strategic factor in facilitating CFP regionalization and offering institutions already mediated solutions, that are exactly what politicians need to make their choices more quickly.