



EUROPEAN COMMISSION

*Brussels, 8.11.2017
C(2017) 7424 final*

*Ms Laura BOLDRINI
President of the
Camera dei Deputati
Piazza Montecitorio
IT – 00100 ROME*

Dear President,

The Commission would like to thank the Camera dei Deputati for its Opinion concerning the proposal for a Council Regulation amending Regulation (EU) 2017/127 as regards certain fishing opportunities {COM(2017) 356 final}. The Commission would like to inform the Camera dei Deputati that the proposal was adopted by the Council on 25 July 2017.¹

The Commission recalls that the proposal, including as regards the allocation of Mediterranean swordfish quotas, was based on consultations with Member States, and has as its core objective to provide operators and fishermen with legal and economic certainty to enable them to operate within the limits of the law. Furthermore it allows meeting Union's international obligations regarding the fishing possibilities allocated to Union fleets and contribute to the goals of the Common Fisheries Policy, notably to the conservation of marine living resources and the management of fisheries and fleets exploiting those resources.

In response to the Camera dei Deputati's specific questions on the proposal the Commission would like to refer to the attached annex.

The Commission hopes that the clarifications in this reply address the issues raised by the Camera dei Deputati and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Karmenu Vella
Member of the Commission*

¹ Council Regulation (EU) 2017/1398 of 25 July 2017 amending Regulation (EU) 2017/127 as regards certain fishing opportunities, OJ L 199 of 28.7.2017, p.2.

Annex

The Commission has carefully considered each of the issues raised by the Camera dei Deputati in its Opinion and is pleased to offer the following clarifications.

The Camera dei Deputati challenges explicitly two issues, namely:

- a) the criteria used to establish the allocation key between Member States and*
- b) the difference between the reference period agreed at the level of the International Commission for the Conservation of Atlantic Tunas during the working group of the Panel 2 of International Commission for the Conservation of Atlantic Tunas held in Madrid 20-22 February 2017.*

As regards the first issue on the definition of the criteria used to establish the internal allocation of the European Union share of the International Commission for the Conservation of Atlantic Tunas Total Allowable Catch for Mediterranean swordfish, the Commission initially notes that its services organised a technical meeting with Member States' administrations on 21 March 2017. During that meeting it was clear that the inclusion of the years 2010 and 2011 was likely to be unacceptable to a large majority of Member States.

This was due to the consideration that not all the data on catches registered by Italy during those particular years could be considered as reliable. In this vein, a judgment of the Court of Justice from October 2009² condemned Italy among other for failing to control, inspect and survey in a satisfactory manner fishing activities within its territory and within the waters subject to its sovereignty or jurisdiction, with regard to compliance with the provisions governing the retention on board and use of driftnets. Subsequent inspections on the ground from the European Union agents³ and several reports from non-governmental organisations (Marevivo, legambiente, Greenpeace), regional fisheries management organisations (International Commission for the Conservation of Atlantic Tunas), third countries (United States) and from other sources (parliamentary questions, inspection reports in the context of joint deployment plans of Regional fisheries management organisations) revealed the continuation in the use of illegal driftnets in Italy and the failure of the Italian Authorities to enforce European Union law at this respect even after 2009. For this reason, on 30 September 2011, the Commission sent a letter of formal notice⁴ to Italy under Article 260(2) of the Treaty on the Functioning of the European Union for failure to comply with the Court judgment of 29 October 2009 in case C-249/08. Evidence collected in the wake of the Court judgment, in conjunction with findings of serious failures in the Italian fisheries control system, justify the Member States' strong doubts about the legality of the swordfish track records for the years in issue.

² Judgment of the Court (Seventh Chamber) of 29 October 2009 - *Commission v Italian Republic* (Case C-249/08) OJ C 312 of 19.12.2009, p.8.

³ COMM conducted 5 inspections missions in order to verify compliance on the ground with the Court's judgment in this case on 17-21 May 2010, 14-18 June 2010, 4-8 April 2011, 9-13 May 2011 and 4-8 July 2011.

⁴ Infringement n° 1992/5006.

Taking into account the abovementioned elements, and with a view to finding an acceptable compromise, the Commission services presented during the technical meeting with Member States' administrations on 21 March 2017 a scenario based on weighted averages, which implied that the years 2010/2011 would be included but would be given less weight in the calculation of the average catches. It was explained that this approach would be the recognition that not all catches in the period in question were necessarily illegal, while taking into account that considering all the reported catches in the calculation of national quotas despite having doubts as to reliability of the reports would have had a substantial impact on the effectiveness of the Total Allowable Catches. This approach goes in line with the Judgment of the Court dated 11 January 2017 in case C-128/15.

None of the delegations, including the Italian, supported this option and the ensuing discussion made it clear that all Member States, except Italy, supported using a reference period of 2012 to 2015, thus excluding the years 2010 and 2011.

Due to the absence of consensus, the Commission services indicated their openness to alternative solutions if a consensus could be found and invited Member States to send their possible proposals to the Commission services to resolve the remaining issues. No Member State responded to this invitation. Following the broad support for a reference period of 2012-2015⁵ and in the absence of alternative proposals, the Commission services elaborated a non-paper that was presented for the consideration of the Council Working Party on 4 April 2017 and later included as part of the proposal amending Regulation (EU) 2017/127. As explained initially, the proposal was adopted by the Council on 25 July 2017 and subsequently published in the Official Journal of the European Union. In doing so, the Council acted efficiently, and in line with the aforementioned judgment of the Court in relation to case C-128/15 according to which when reports of catches (in this case those made by Italy for the years 2010 and 2011) raise doubts as to their reliability, the Council is empowered to adopt a measure to counteract that risk. This Case Law is supported by previous case law such as the Court of Justice's Judgment on C-120/99 Italy vs Council (para 42-44), which concludes that there is no relative stability in a stock of fish for which no Total Allowable Catch or quota has previously been fixed, that the Council has flexibility regarding the reference period to be used, and that it is settled case-law that the Community legislature enjoys a considerable power of discretion in circumstances where it is necessary to evaluate a complex economic situation (as it is the case of fisheries)⁶.

⁵ Complemented by Adjustments of some quota for Member States with smaller catches, elimination for each Member State from the calculations of the average the year where the lowest catches have been reported

⁶ Reviewing of such power of the Council (by the Court) can only be made on grounds of manifest error, or when the Council exceeded the limits of its discretion.

As regards the second issue relating to the difference between the reference periods agreed at International Commission for the Conservation of Atlantic Tunas Working Group Meeting in Madrid on 20-22 February 2017 and the reference period used to define the allocation key at European Union level the Commission would like to draw the Camera dei Deputati's attention to the fact that in both processes, the Commission strictly respected the criteria defined by the Council. During the preparation of the negotiations in International Commission for the Conservation of Atlantic Tunas on the allocation key it had equally been made clear that the reference period used for negotiating with our external partners would not necessarily be used for the internal European Union allocation.

Furthermore, while contesting the illegal use of driftnets during the years in question Italy had in fact also insisted that both processes (allocation at International Commission for the Conservation of Atlantic Tunas level and internal allocations amongst Member States) are separate processes and therefore do not need to follow the same criteria.