

CHAPTER XVI

COMMON FISHERIES POLICY (CFP)

A- THE PRINCIPLES

The Common Fisheries Policy has developed within the framework of the CAP as article 38 (1) defined fisheries and products thereof as "agricultural products". Certain principles of the CAP have been adapted to the CFP which consists of the following elements:

a) Equal access:

In view of the mobile nature of fish they belong to no particular nation. Therefore the CFP accords the Community fishermen equal access¹ to the "Community pond" delimited by the national limits of 200 nautical miles or a median line. They can fish there without discrimination subject, however, to negotiated derogations reserving 12-mile national fishing rights, providing for a licence for sensitive species and vessels' specifications².

The conservation and management of fish stocks are controlled by the total allowable catches (TAC's) fixed annually. The volume of catches (i.e. the quota) available to the Community is distributed between the member states³.

b) Structural reform:

Like the agricultural sector the fishing industry required a restructuring⁴ which is financed by the European Agricultural Guidance and Guarantee Fund.

c) Marketing organization:

The common organization of fishery markets was set up by Regulation 214/70⁵ with

the object of rationalizing the development of fisheries, securing a fair deal for fishermen, stabilizing the markets in order to bring supplies of good products to the consumer at reasonable prices. The market organization consists of producers' associations, common marketing standards and a price support system, financed by the EAGGF.

d) Conservation of resources and policing of the CFP:

Regulation 2527/80⁶ purports to control conservation of the diminishing sea resources by imposing restrictions on mesh sizes, types of gear, by-catches and fishing in closed seasons and certain zones. Regulation 753/80⁷ introduced a system of reporting catches. Regulation 170/83⁸ and Regulation 171/83⁹ established a Community system for conservation and management of fishery resources and Regulation 172/83¹⁰ fixed total allowable catches for certain fish stocks and certain zones.

The most recent conservation measures include limitation of driftnet fishing in the Atlantic and a time-table for introducing a larger mesh for fishing nets in the North Sea.

The policing of the CFP is in the hands of the Member States in the waters under their jurisdiction who, in the absence of a Community penal system, may impose their own penal sanctions. In addition there are also Community fishery inspectors acting under the authority of the Commission.

e) International aspects:

International aspects of the CFP are no longer within the jurisdiction of the Member States. In exercising its competence in this field the Community has entered into agreements with certain countries notably Norway, Sweden, Canada and the USA as well as international organizations. These agreements are binding upon the Member States.

Fishery products are subject to the Common Customs Tariff and external trade agreements within the Common Commercial Policy.

B- REFORMS OF THE CFP

Certain lessons, learned from the CAP, have been applied to the CFP. Thus fishermen, unlike farmers, do not rely on guaranteed prices. CFP, instead, contributes to the stabilization of the market prices and the protection of fishermen from unsuccessful ventures. Thus, fishermen benefit from price fluctuation due to the irregularity of fish supplies. The system of intervention is also different as it is designed to protect fishermen from the minimum price levels and the formation of surpluses. Indeed instead of having a storage of intervention products the CFP provides for the withdrawal of the surplus from the market.

By the end of 1991 the Commission is due to present a report on the CFP and will, presumably, suggest reforms. The most difficult problem is that of overfishing and policing the system quite apart from the conservation of the diminishing resources and the effects of the pollution at sea.

Another thrust is in the direction of aquaculture which should supplement the sea resources.

C- TURKISH FISHERIES POLICY^{10a}

The CFP could have a political, apart from an economic and social impact. It could contribute to the resolution of conflicts in the Aegean Sea.

The measures which Turkey would have to take would follow the implementation of the CFP.

Turkish fishermen would gain access to any part of the "Community pond" other than the 12 mile limit reserved to member states. They would also gain access to a wider market as they would be able to sell their fish anywhere in the Community.

The Turkish consumer would have a wider variety of fish available on the local market and also a wider selection of fish products irrespective of the season.

Turkish fisheries are regulated by the fisheries Code 1380 which was adopted on 22.3.1971 and issued in the Official Gazette of Republic of Turkey on 4.4.1971. This

Code was amended by Code 3288¹¹ on the basis of article 166 of the Constitution. The most important change effected by this amendment was concerned with penalties.

Another related legislation is Code 3161 concerned with the Organization and Duties of the Ministry of Agriculture and Rural Affairs. Article 2 of this Code has a provision stating that the Ministry will function on the duties related to fisheries.

In addition to the above mentioned Codes, under the provisions of Code 1380¹² a regulation is being prepared in order to implement the Code. According to Article 23 of the Code 1380, the Ministry of Agriculture and Rural Affairs has to prepare circulars each year to regulate fishing activities during the fishing season. The Circulars contain rules regulating fishing in the seas and inland waters of Turkey and the pollution of water. The rules of the Circular are divided into the following parts:

- a) methods of fishing,
- b) size limitations and prohibitions of fishing of certain species,
- c) prohibition of certain fishing gear,
- d) measures for the protection of lagoons,
- e) area restrictions, and
- f) other prohibitions.

The Fisheries Code 1380 lays down rules for the conservation, production and control of fisheries and consists of the following sections:

- a) General rules: Scope and definitions;
- b) Fisheries production: Rules for licenses, fishing areas and their usage;
- c) Development, encouragement and protection: Rules concerning research and development, producers' organizations, training, education and exemptions;
- d) Prohibitions and enforcement rules;
- e) Selling points;
- f) Various measures;
- g) Procedures for the rulings;
- h) Criminal procedures;

i) Validity of some regulations and amended articles.

Since the Turkish legislation on fisheries differs only in detail from the EC legislation, the following amendments would comply with the Community rules in case of a EC membership:

-Financial aid to the fishermen who are suffering losses as a result of capacity adjustments in accordance with the Council Directive 83/515.

-Definition of the characteristics for fishing vessels in accordance with Council Regulation 2930/8

-Adoption of Turkish legislation in accordance with Regulation 4028/86 which purports to improve the management of fisheries and the aquaculture sector. The Turkish legal system encourages the fisheries sector with the financial aids but there are some differences in detail such as the conditions to benefit from such aids. There is no size limitation for vessels in Turkey in order to be able to obtain a fisheries credit but small fishermen are encouraged in general. There is no regulation of the aquaculture sector. The EC Regulation prohibits fishing activity for 3 years in the fishing grounds where aquaculture is planned for the purpose of stock evaluation. The Circular regulating fishing activity in Turkey has no similar prohibition. An amendment is also necessary to Turkish Cabotage Law 815 which does not allow foreigners to engage in fishing activities, because discrimination against Community nationals would be contrary to EC law and would frustrate the joint venture provisions of the same regulation.

-Concepts like the reference price, guide price, free at frontier prices or withdrawal prices, brought by the market organization rules of the Community are new to the Turkish fisheries system. That is why some adjustments of Turkish law are also necessary in this field.

-Council Regulation 2315/86 regarding the import of fisheries products restricts the import permits of such products to 90 days whereas the Turkish regime of imports allows up to six months.

-Legislation laying down general rules for the granting of carry-over premiums for certain fishery products¹³ or fixing the conversion factors for frozen squid¹⁴ and the like do not exist in the Turkish fisheries system.

- There is no system granting export refunds in respect to some fisheries products in the Turkish fisheries policy as provided by the Community legislation¹⁵.

- Commission Regulation 2807/83 lays down detailed rules for recording information on member states catches of fish which includes definitions of log books for fishing vessels, landing ports, mesh sizes, fishing gear, radio transmission and vessel types. Although some data is collected from the fishermen under the Fisheries Code in Turkey they do not cover all the details mentioned in the EC Regulation.

- The determination of the fishing net mesh sizes is defined in detail by Commission Reg. 2108/84, whereas no such rules are mentioned in the Fisheries regulation in Turkey setting the technical specifications for fishing nets.

- Many details concerning the fisheries policy require legal adjustments to the relevant Turkish legislation. There is no standard for the attachment of devices to fishing tackle in Turkey (relevant EC Reg. 3440/84).

There is no size limitation for crabs¹⁶. Turkey would also have to accept the EC definition of mesh sizes, net device attachments, selection of fishing gear, determination of the protected species, in accordance with Regulation 1866/86. More detailed conditions are required under Regulation 1381/87 and marking of fishing vessels than is the position in Turkey at the moment.

-With regard to the external fisheries relations of the EC, the fisheries agreements signed with third countries would impose direct duties on Turkey since such agreements are binding upon the member states in the EC law. It is stated in these agreements that the principles of the United Nations Law of the Sea Convention (UNCLOS III) are respected but this is irrelevant since Turkey has not signed the Convention. The declaration of the 200-miles exclusive economic zones by the Community on 3 November 1976, by the Council's resolution, is also in line with the general principles of this Convention and would apply to Turkey as a result of the membership of the EC.

In conclusion the harmonization of Turkish fisheries policy will not be difficult as it does not contravene entirely the EC principles. Since the Fisheries Code 1380 is the main law regulating fisheries in Turkey an amendment of the Code implementing the Community rules is necessary. The same applies to the law governing the functions of the Ministry.

Other legislation relevant to fisheries indirectly should also be harmonized by either implementing EC legislation or by annulling some of the contradictory articles.

Turkey should also take the necessary measures in order to harmonize its fisheries legislation to the EC system of the management and conservation of the fish stocks in the Mediterranean.

NOTES:

- 1 See e.g. Case 63/83: R v. Kirk (1984) ECR 2689
- 2 Reg. 170/83 (OJ. 1983, L.24/1); See Rederij L. De Boer en Zonen Fish and Fish Products Board (1987) 2 CMLR.515
- 3 See Case C-213/89, Re Factortame R v. Secretary of State for Transport (1990) 3CMLR, 867, concerning the "quota hopping" of Spanish-owned vessels registered in the U.K.
- 4 Reg. 214/70 (OJ. 1970, L.236/1)
- 5 Amended by Reg. 100/76 and revised by Reg. 3796/81 (OJ.1981, L.379/1)
- 6 OJ. 1980, L.258/1
- 7 OJ. 1980, L.84/33
- 8 OJ. 1983, L.24/1
- 9 OJ. 1983 L.24/14
- 10 OJ. 1983, L.24/31
- 10a Mehmet Kılıç
- 11 Official Gazette 28.5.1986,
- 12 as amended by Code 3288
- 13 EC Reg. 2203/82
- 14 EC Reg. 3611/84
- 15 EC Reg. 110/76 and EC Reg. 686/78
- 16 Relevant EC Reg. 1048/86