

European Association of Fish Producers Organisations
Association Européenne des Organisations de Producteurs dans le secteur de la pêche



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Mr. João AGUIAR MACHADO
Director-General for Maritime Affairs and
Fisheries
DG MARE - European Commission
1049 BRUSSELS

EAPO17-03

Oostende, 3rd February 2017

Dear Mr. Machado,

Subject: *EAPO and Europêche request for clarification on the apparent contradiction between Article 39 of the Consolidated Treaty on the functioning of the European Union and Articles 15 and 16.1 of the Common Fisheries Policy.*

EAPO and Europêche on a regular basis have expressed concerns about the feasibility of the implementation of the Landing Obligation and specifically about the economic consequences. In this context EAPO and Europêche are focusing on achieving a realistic approach to the implementation of art. 15 of the CFP and have pinpointed the threat of choke species in position papers since the CFP regulation proposal was published.

The choke species problem cannot be underestimated and already in 2016 for some demersal fisheries we have seen actual area closures as a consequence of a choke species quota being fully used. The avoidance of unwanted catches through technical and spatial measures has been increasingly successful in most fisheries. However, even combined with quota management measures and exemptions such as de minimis, high survivability and interspecies flexibility, it will not be possible to fully mitigate the impacts of choke species. All these measures will not always be sufficient to resolve choke situations in a timely manner. This may result in fishermen in a fishing area being unable to utilise their quotas of other stocks and/or fish for species not under any catch restrictions.

Fisheries representatives have identified situations where the introduction of a species under the landing obligation would lead to a closure of an area which is vital to the industry as early as March or even earlier. Fishermen would no longer be able to utilise their rightful catch opportunities of target species which are within safe biological limits or even at MSY-levels. The same can be said about fisheries from a Member State with zero quota for some species in an area in which they have they target other species. Also in these examples the choke situation is unlikely to be resolved through the application of any of the available mitigation measures.

EAPO and Europêche have assessed that the above circumstances lead to a contradiction between art. 15 of the CFP and art. 39 of the consolidated version of the Treaty on the Functioning of the EU.¹ Art. 39 of the Treaty stipulates the objective *to ensure the optimum utilization of the factors of production, and thus to ensure a fair standard of living for the fisheries community by assuring the availabilities of supplies*. In a choke situation due to a landing obligation fishermen will be unable to utilise their fishing opportunities fully and will suffer significant economic losses.

Also, a choke situation is in contradiction with article 16.1 of the CFP whereby fishing opportunities are allocated to Member States ensuring *relative stability of fishing activities of each Member State for each fish stock or fishery*. If an area closure occurs because of a landing obligation choke situation, the catch opportunities to which the fisheries of a member state are entitled cannot be fully used. Accordingly in EAPO's and Europêche's view there is the unlawful consequence that the relative stability is breached.

A further review of the above examples by the producers organisation led to the conclusion that occurrences of choke situation will have a detrimental impact on market stability and on the EU self-supply ability of fisheries products.

On this basis EAPO and Europêche ask DG MARE to review, comment on and act on as deemed required, the following conclusions :

1. There is a contradiction between art. 39 of the Treaty and art. 15 of the CFP, in respect of landing obligation choke situations through which fishermen cannot fully utilise their fishing opportunities.
2. Choke situations affect the relative stability which is in contradiction with art. 16.1 of the CFP.
3. Art. 39 of the Treaty supersedes art. 15 of the CFP.
4. The closure of an area to fisheries for which catch opportunities in that area are not fully used, is unlawful.

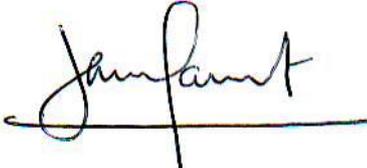
EAPO and Europêche look forward to your confirmation that the above requested exercise is worthwhile for DG MARE to follow up and that we will be informed of the process and the outcome. We would also highly appreciate to receive the Commission's own view on the outcome of our assessments.

Yours Sincerely,



A handwritten signature in blue ink, appearing to be 'P. Visser', with the name 'Pim Visser' written in smaller letters below it.

Pim Visser
President EAPO



A handwritten signature in blue ink, appearing to be 'Javier Garat', with a long horizontal line underneath.

Javier Garat
President Europêche

¹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007.