

THE BLACK SEA IN THE PROCESS OF REFORMING THE EUROPEAN UNION'S COMMON FISHERIES POLICY

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SUMMARY: *The Black Sea represents the largest semi-enclosed sea in the world. Before January 1st, 2007 it seemed to be far away from Brussels. But, after the accession of Romania and Bulgaria to the European Union, the Black Sea has become a part of the Eastern border of this International Organization. Hence this is a region of interest for the European Union not only geo-strategically, but also from the perspective of its different Policies. The Common Fisheries Policy is, as outlined in the first part of this work, the European Union's instrument for fisheries management and aquaculture performed not only on the territory of the Member States in the European Union's fishing areas but also by fishing vessels flying the European flag in the waters of third countries or in international waters. And nowadays, the maritime areas related to the conservation of living aquatic resources of Romania and Bulgaria are managed, as developed in the second part of this paper, consistent with the standards of this European Union's Policy.*

INTRODUCTION

Mainland Europe is surrounded by a profusion of islands, and its coasts are bathed by four seas (the Mediterranean, the Baltic, the North Sea and the Black Sea) and two oceans (the Atlantic and the Arctic Ocean). Our continent is a peninsula with 68,000 kilometres of coastline, longer than that of either of two other great land masses, the United States of America and the Russian Federation. The maritime surface area that comes under the sovereignty or jurisdiction of the Member States of the European Union (EU) is greater than that of latter's total land surface area. Consequently, more than two-thirds of the EU's borders are coastal, whilst its maritime spaces cover a larger area than its land spaces.

Furthermore, Europe also enjoys a presence, in the form of its ultra-peripheral regions, in the Atlantic Ocean, Indian Ocean and the Caribbean Sea. The EU's maritime interests are therefore many and varied, affecting the whole of the area. At the same time, it is important to note that 22 of the EU's 27 Member States are coastal¹, the capital cities of 7 Member States are located on the coast², no-one living within the EU is more than 700 kilometres from the sea and almost half of the EU's total population lives at a maximum distance of 50 kilometres from the coast, the majority in urban areas along the coastline itself.

A further point to note is that 3 to 5% of the EU's Gross Domestic Product (GDP) comes from industries and services related with the sea, a figure that does not include the value of raw materials such as oil, gas or fish, and that almost 90% of the EU's external trade and over 40% of its internal trade is transported by sea. The EU is also the undisputed world leader in terms of shipping, with over 40% of the global fleet. Similarly, it is also the world's first maritime power³. Shipping and ports are essential elements for international trade, and in this regard the EU's maritime ports register an annual traffic of 3.5 billion tons of cargo and 350 million passengers. Finally, it should be noted that some 350,000 people work in the EU's 1,200 ports and ancillary services, generating a total added value amounting to close on 20 billion euros.

Turning now to fishing, it is important to note that the EU's fishing fleet comprises over 97,000 vessels and is extremely productive, placing the Union at the forefront of the global fishing industry. Some 260,000 people

¹ Namely Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovenia, Spain, Sweden, The Netherlands and The United Kingdom.

² Athena, Copenhagen, Dublin, Helsinki, La Valletta, Lisbon and Stockholm.

³ Particularly in the fields of navigation, shipbuilding technology, coastal tourism, marine energy (including renewable energy) and ancillary services.

are estimated to be directly employed in the fishing sector in the EU, with each job at sea generating a further four to five on land in the spheres of processing, packaging, transport and commercialisation, as well as in shipbuilding, the manufacture of fishing gear, ship chandlers, maintenance companies and the like. At first sight the contribution of fishing, in economic terms, to the wealth of the various EU Member States may appear to be rather limited, but it should not be forgotten that this activity accounts for 10% of the workforce in more than twenty of the EU's peripheral coastal areas, and between 2 and 10% of total employment in a further eighty.

All of which has led the EU, as we shall see in *Part I* of this study, to equip itself with a true Common Fisheries Policy. The incorporation of Romania and Bulgaria has meant that the waters coming under the sovereignty or jurisdiction of these two Member States, related to the conservation of living aquatic resources from there, are now subject to all the EU legislation applicable in the ambit of this Policy, with direct consequences on part of the Black Sea, as we will have the opportunity to observe in *Part II* of this analysis.

I. THE LEGAL FRAMEWORK OF THE COMMON FISHERIES POLICY:

The Common Fisheries Policy (CFP) comprises a set of rules and mechanisms that cover the conservation and exploitation of living aquatic resources (fish, crustaceans and molluscs) and aquaculture, including their processing and commercialisation. These activities may take place within the territory of Member States or in the waters under their sovereignty or jurisdiction, or may otherwise be carried out by fishing vessels flying the flag of an EU member state in the waters of third-party states or in international waters.

The first sign of the EU's interest in this area came in 1966, when the European Commission produced a report dealing with some of these matters. It was not until the early nineteen-seventies, however, that the first European legislation dealing with fisheries was introduced, restricted to a certain number of specific material areas, namely organising the markets for fishery products, determining access to European funds for modernising the industry and determining the right of vessels to fish in other Member States' waters.

At the outset the CFP was linked to the Common Agricultural Policy, but then steadily diverged from the latter as a result of the EU's growth and development and the need to deal with specific problems affecting the sector such as the conservation of resources and international fisheries relations. The Policy thus began to be seen as the EU's instrument for managing a common resource (fisheries and aquaculture) and fulfilling its obligations under the primary legislation, or Treaties, of the time.

Fisheries achieved its position of definitive importance in January 1973 when Denmark, Ireland and the United Kingdom, all of which had major fishing interests, became members of what is now the EU. Suffice it to say that the sum of the total catches of these three countries was double that of the EEC's six founding nations. Ten years later, in 1983, the Council approved the first Regulations concerning the conservation and management of fishery stocks, giving rise to the birth of what is colloquially known as 'Blue Europe'.⁴ The entry of Spain and Portugal in the EU in 1986 brought with it a two-fold increase in the number of fishermen employed in Member States, a 75% rise in fishing capacity and 65% more tonnage in the fishing fleet, whilst fish production and consumption jumped by 45%. The challenge, therefore, was how to incorporate the new members, with their considerable fishing interests, without endangering the CFP.

Since the early nineteen-seventies, when, as already mentioned, the first legislation in the matter of fisheries was adopted, the CFP has undergone major change. In its current form it focuses on five key aspects: the conservation and management of marine resources and the protection of marine ecosystems; the monitoring and inspection of fishing activities; structural measures; the common organisation of markets in the fisheries products and aquaculture sector; and last but not least, fishery relations and agreements with third-party states and, where international waters are concerned, with international fishing organisations.

The legal foundations upon which the EU's competences in fisheries matters currently rest are Articles 38-44 of the Treaty of the Functioning of the European Union, which came into force on 1 December 2009 (reproducing Articles 32-38 of the Treaty establishing the European Community), which deal with agriculture and fisheries: this is the first time that fisheries are expressly mentioned in the primary legislation. Furthermore, Article 3.1.(d) states that the EU shall have exclusive competence in "*the conservation of marine biological*

⁴ The most representative was the Regulation (EEC) No 170/83 of Council, of 25 January 1983, establishing a Community system for the conservation and management of fishery resources, *OJ L* 24, 27.01.1983, p. 1.

resources under the common fisheries policy”, whilst Article. 4.2.(d) states that the Union shall have shared competence in “*agriculture and fisheries, excluding the conservation of marine biological resources*”.

The current legal framework of the CFP is constituted, essentially, by three Regulations adopted by the Council of Ministers in December 2002, and which came into force on 1 January 2003, namely Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy⁵ (its aim being to ensure the long-term viability of the fisheries sector through the conservation, management and exploitation of living aquatic resources, limitation of the environmental impact of fishing and management of the fleet capacity, monitoring and applying the rules of the CFP); Regulation (EC) No 2369/2002 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector⁶; and Regulation (EC) No 2370/2002 establishing an emergency Community measure for scrapping fishing vessels⁷.

Finally, it should be noted that this legal framework is being reviewed again. In this regard, the European Commission has published its Green Paper on the reform of the CFP in the first half of 2009. In this document, significant innovations have been introduced, including those relating to a greater concern for the protection of the marine ecosystem. At present, after the response of the European most important fishing operators, the European Commission continues its work. The reform is scheduled to take effect in 2012.

II. THE POSITION OF THE BLACK SEA WITHIN THE EUROPEAN UNION’S COMMON FISHERIES POLICY

As is well known, Romania and Bulgaria became Member States of the EU on 1 January 2007⁸, and thus the Black Sea is now part of the eastern borders of this International Organisation. Notwithstanding the new dimension of the strategic importance of this geographic area for the EU⁹, already previously recognised on several occasions by the Union as, for example, in the Communication of the Commission on Black Sea Synergy, published shortly after the latest expansion of the EU had taken place¹⁰, the fact is that the Black Sea waters under the sovereignty or jurisdiction of these two new Member States are now the responsibility of the EU within the framework of the CFP. And, therefore, all the fishing activities taking place in the said maritime areas have to be managed in accordance with the rules of this Policy.

Membership of the EU implies, for these two Balkan countries, that they now have to apply existing Community legislation in this matter. In this regard, it is interesting to note that the Chapter on the CFP created no major problems during negotiations for their joining the Union: Romania, for example, finalised negotiations in the sphere of fisheries matters in June 2001, accepting all Community legislation in this field without requesting any repeal or transition period applicable to this sector whatsoever¹¹.

With regard to Bulgaria and Romania’s current position within the CFP, it should be noted that at present neither of these two States fishes in the waters of other Member States, and nor do the other EU Member States fish in the waters that come under their sovereignty or jurisdiction. Furthermore, the contribution of these two Member

⁵ OJ L 358, 31.12.2002, p. 59.

⁶ OJ L 358, 31.12.2002, p. 49.

⁷ OJ L 358, 31.12.2002, p. 57.

⁸ For an elaboration of the issues raised by the accession of Romania and Bulgaria to the EU, see: OANTA, G. A.: “Rumania y Bulgaria en la Unión Europea”, *Revista de Derecho Comunitario Europeo*, nº 29, 2008, pp. 91-132.

⁹ Recognised as such by the European Parliament in its Resolution of 17 January 2008 on a Black Sea Regional Policy Approach (OJ C 41 E, 19.02.2009, point b). See also: COM (97) 597 final: *Communication from the Commission to the Council - Regional co-operation in the Black Sea area: state of play, perspectives for EU action encouraging its further development*, Brussels, 14.11.1997. For an analysis of the geostrategic position of the Black Sea, see: MARCU, S.: *El Mar Negro: geopolítica de una región encrucijada de caminos*, Ed. Universidad de Valladolid, Valladolid, 2007.

¹⁰ COM (2007) 160 final: *Communication from the Commission to the Council and the European Parliament Black Sea Synergy - A new regional cooperation initiative*, Brussels, 11.04.2007, p. 7. For more details regarding the Black Sea Synergy, see: EMERSON, M.: “The EU’s New Black Sea Policy. What kind of regionalism is this?”, Centre for European Policy Studies, CEPS Working Document No. 297, 2008; HATTO, R.; TOMESCU, O.: “The EU and the Wider Black Sea Region: Challenges and Policy Options”, Garnet Policy Brief, nº 5, 2008; LEMBKE, J.; VOINESCU, S.: “Enlarging the European Union to the Black Sea: Strategic Implications and Prospects”, *Studia Diplomatica*, vol. LIX, nº 4, 2006, pp. 57-75.

¹¹ In this regard, see: DUZGUNES, E.; ERDOGAN, N.: “Fisheries Management in the Black Sea Countries”, *Turkish Journal of Fisheries and Aquatic Sciences*, nº 8, 2008, p. 186.

States to the overall activity undertaken within the framework of the CFP cannot be said to be significant: for example, if we take the case of the EU fishing fleet, Romania occupies 19th place in the ranking (with 0.5% of the total number of fishing vessels in Member State fleets), ahead only of Lithuania, Slovenia and Belgium, whilst Bulgaria ranks 9th (with 2.6% of the total number of fishing vessels registered in the EU).¹² With regard to the total catches per Member State, in 2007 Bulgaria and Romania occupied the 18th and 20th places, respectively, of a ranking led by Spain.¹³ Finally, as far as production (catches and aquaculture) is concerned, Romania ranked 20th and Bulgaria 21st, ahead only of countries such as Malta, Cyprus, Slovakia, Austria and Slovenia.¹⁴

In connection with the above, it is also necessary to stress that although the EU fishing fleet has a presence world-wide, the great majority of its catches come from the Northeast Atlantic and the Mediterranean. In terms of total world catches per fishing area, in 2007 the Mediterranean and Black Sea accounted for 1.9%, placing it 11th in the ranking.¹⁵

Nevertheless, the management of fishery resources in the maritime spaces of Romania and Bulgaria is closely related to the condition of these stocks.¹⁶ The Black Sea is currently going through a delicate period as far as the environment is concerned, and is faced with major ecological problems, experiencing a steady and continuous decline of its ecosystem mainly due to the inadequate fisheries conservation measures at sea-basin level.¹⁷ Although there is sufficient historical data testifying to the wealth of fishery stocks that once populated this maritime area¹⁸, it is none the less true that nowadays it is undergoing a reduction in biodiversity that has major negative consequences for its coastal states, thus deprived of significant live aquatic resources.¹⁹ This situation is to a great extent due to a variety of factors such as the massive chemical pollution of the River Danube, the presence of invasive species, nuclear contamination, climate change, over-fishing and Illegal, Unreported and Unregulated fishing.²⁰

These environmental problems are compounded by the over-exploitation of fish populations, the European Commission estimating that 24 of the fish species in the Black Sea have been depleted to below safe biological limits. The situation is only comparable with that of the North Sea, these negative figures by far outstripping those for fish populations in the Baltic Sea, the Atlantic Ocean and even for international waters as a whole.²¹

A further inconvenience facing the EU in its management of Black Sea fishery resources coming under the sphere of application of the CFP is the nature of the marine species that dwell there, with most fish populations consisting of migratory species. Thus, they are resources that Bulgaria and Romania may share at any given moment with other third-party Black Sea coastal states.²² In this context, the international legal framework applicable to fishing in the Black Sea is of particular relevance. We refer, above all, to the activity undertaken by the General Fisheries Commission for the Mediterranean (GFCM) and the Convention Concerning Fishing in the Black Sea.

¹² Source: "Facts and Figures on the Common Fisheries Policy", Basic Statistical Data, European Commission, Maritime Affairs and Fisheries, Publications Office of the European Union, 2010, p. 11.

¹³ *Ibidem*, pp. 17 and 19-20.

¹⁴ *Ibidem*, p. 14.

¹⁵ *Ibidem*, p. 15.

¹⁶ On an analysis of the problems of environmental management of fisheries resources in the EU, see: SOBRINO HEREDIA, J. M.; LÓPEZ VEIGA, E. C.; REY ANEIRO, A.: *La integración del enfoque ecosistémico en la política pesquera común de la Unión Europea*, Tirant lo Blanch, Valencia, 2010.

¹⁷ In this regard, see: COM (2009) 536 final: *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Developing the international dimension of the Integrated Maritime Policy of the European Union*, Brussels, 15.10.2009, pp. 9-10.

¹⁸ Suffice it to say, now, among others, the case of the Phoenicians and Greeks who obtained substantial income from the Black Sea fisheries resources.

¹⁹ On further development on the current environmental situation of the Black Sea, see: LERICOLAIS, G.: "La Mer Noire, un espace environnemental en danger", in CHATRÉ, B.; DELORY, S. (dir.): *Conflits et sécurité dans l'espace mer Noire: L'Union européenne, les riverains et les autres*, Éditions Panthéon-Assas, Paris, 2009, pp. 79-86.

²⁰ In this regard, see: DUZGUNES, E.; ERDOGAN, N.: *op. cit.*, p. 181.

²¹ Source: "Facts and Figures ...", *doc. cit.*, p. 4.

²² The Black Sea coastal states are Bulgaria, Georgia, Romania, Russia, Turkey and Ukraine.

The GFCM is a Regional Fisheries Management Organisation established by the FAO in 1949.²³ Its main objective is to promote the development, conservation and rational management of living marine resources in the Mediterranean and the Black Sea. Amongst its 24 members, in addition to the Mediterranean countries, including Turkey, we also find Romania, Bulgaria and the EU, the latter adopting a very active position within the Organisation. In our view, it is significant that the other Black Sea countries, namely Georgia, Russia and Ukraine, have not joined the GFCM.

With regard to the Convention Concerning Fishing in the Black Sea, it should be noted that it was enacted on 7 July 1959 in the Bulgarian city of Varna by three countries bordering this sea: Bulgaria, Romania and the then USSR. The Convention came into force on 21 March 1960; its principal objective being the rational utilisation of the fishery resources of the Black Sea and the development of marine fishing, although in recent years there has been no development whatsoever in this regard²⁴.

The first step taken by the EU in the management of Black Sea fishery resources within the CFP was the publication in December 2007 of Regulation (EC) No 1579/2007²⁵, subsequently modified by Regulation (EC) No 1257/2008.²⁶ Through the medium of these regulations the Council established, for the first time in history, fishing opportunities for certain fish stocks in this sea and the specific conditions under which these may be used, in this case for 2008.

Regulation (EC) No 1579/2007 was replaced by Regulation (EC) No 1139/2008 fixing the fishing opportunities in the Black Sea for 2009²⁷, which was in turn replaced by Regulation (EC) No 1287/2009 fixing fishing opportunities for 2010²⁸.

With regard to these four regulatory actions, firstly it should be pointed out that in reality they only fix limits for the catches of two species, turbot and sprat; and secondly, that they are of an annual nature, the EU having each year to fix the fishing opportunities for the following year. As far as the fishing opportunities themselves are concerned, in the four Regulations mentioned above the total admissible catches of turbot are divided equally between Romania and Bulgaria, whilst the TACs for sprat may be fished only by vessels flying the flag of Bulgaria or Romania.

Nevertheless, there is no reason to rule out a possible extension of this list of species managed by the EU in the future. A first step in this direction would be to establish a series of sustainable conditions in the long term. Furthermore, since a proportion of the fishery resources in the Black Sea are shared with third-party Black Sea countries, this objective would be feasible within the framework, for example, of fishery agreements enacted between the EU and the said countries. However, it must be said that at present no such fishery agreement exists.²⁹ Fisheries management and an appropriate approach to the Black Sea ecosystem require the involvement of all its coastal nations.³⁰ In our opinion, it is not also ruled out the possibility of setting up a Regional Fisheries Organisation³¹ whose main objective would be precisely the management of Black Sea fishery resources.

²³ For more details regarding the General Fisheries Commission for the Mediterranean (GFCM), see the web page: www.gfcm.org On an analysis of its activity, see: CHURCHILL, R.; OWEN, D.: *The EC Common Fisheries Policy*, Oxford University Press, Oxford, 2010, pp. 362-363.

²⁴ Among others, see: TESSINARI, F.: "A Synergy for Black Sea Regional Cooperation: Guidelines for an EU Initiative", Centre for European Policy Studies, CEPS Policy Brief, No. 105, 2006, p. 7.

²⁵ Council Regulation (EC) No 1579/2007, of 20 December 2007, fixing the fishing opportunities and the conditions relating thereto for certain fish stocks and groups of fish stocks applicable in the Black Sea for 2008, *OJ L* 346, 29.12.2007, p. 1.

²⁶ Council Regulation (EC) No 1257/2008, of 4 December 2008, amending Regulation (EC) No 1579/2007 fixing the fishing opportunities and the conditions relating thereto for certain fish stocks and groups of fish stocks applicable in the Black Sea for 2008, *OJ L* 338, 17.12.2008, p. 1.

²⁷ Council Regulation (EC) No 1139/2008, of 10 November 2008, fixing the fishing opportunities and the conditions relating thereto for certain fish stocks applicable in the Black Sea for 2009, *OJ L* 308, 19.11.2008, p. 3.

²⁸ Council Regulation (EC) No 1287/2009, of 27 November 2009, fixing the fishing opportunities and the conditions relating thereto for certain fish stocks applicable in the Black Sea for 2010, *OJ L* 347, 24.12.2009, p. 1.

²⁹ For further developments, see: CHURCHILL, R.; OWEN, D.: *op. cit.*, p. 257.

³⁰ COM (2008) 391 final: *Communication from the Commission to the Council and the European Parliament - Report on the first year of implementation of the Black sea synergy*, Brussels, 19.06.2008, pp. 3-4.

³¹ COM (2007) 734 final: *Proposal for a Council Regulation fixing the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in the Black Sea for 2008*, Brussels, 20.11.2007.

Finally, we should not forget that, and as stated in the *Introduction*, the EU is currently engaged in a full-scale reform of its Common Fisheries Policy, the third in its history. The first of these took place in the early nineteen-nineties; the second concluded with the approval of various Regulations on 20 December 2002, referred to in Part I of this study; and the third will come into effect as of 1 January 2013. To this end, in April 2009 the European Commission unveiled its Green Paper on the reform of this Policy, launching a broad public consultation and inviting contributions from a broad spectrum of interested parties as to the future face of European fisheries.³² Needless to say, all the measures included in the new CFP will apply to Romania and Bulgaria alike.

CONCLUSIONS

Although Romania and Bulgaria have each declared a 200 nautical mile Exclusive Economic Zone (EEZ), it is nevertheless true to say that the EU only enjoys a fairly limited area of influence in the Black Sea.

At the present time, the surface area of the waters coming under the sovereignty or jurisdiction of the four Black Sea countries that are not EU Member States, namely Georgia, Russia, Turkey and Ukraine, is much greater than that appertaining to Romania and Bulgaria. This situation, in our opinion, would, however, change substantially if and when Turkey joins the EU.

As things currently stand, it is our view that the main consequence of the entry of Romania and Bulgaria in the EU is that the waters of this International Organisation now include part of the Black Sea. The fact that the waters of these two Member States are now EU waters implies, amongst other consequences, that all the measures in the CFP referred to in Part I of this study are fully applicable to such waters, and, furthermore, that the responsibility for the management of the fishery resources in this area now corresponds to the EU, as detailed in Part II of this analysis.

It will thus depend to a great extent on Romania and Bulgaria to make the most of the opportunities presented by the current proposals for reform of the CFP, which include topics of enormous relevance for the matter in hand, such as helping natural resources to recover, ensuring that fishermen have access to abundant fish stocks, providing the processing industry with competitive access to its raw material, maintaining employment in the fishing industry, offering consumers a wider range of high-quality fish, ensuring that retailers and consumers can be sure that the fish they sell and buy comes from sustainable and well-managed fisheries, and providing greater opportunities for economic diversification in coastal communities.

Regardless to this, we must not forget that the CFP is more than conservation and management of fisheries resources. In this sense, it should be stressed that Romania and Bulgaria have had to adapt its rules on fisheries markets to the abundant and constrained EU's legislation in this area. Also, the policy aspects of fisheries structures can not be forgotten, which can have a significant impact on the state of the obsolete Bulgarian and Romanian fishing fleet. And, finally, we can not fail to mention the international fishery policy, then, who knows?, if someday Romania return as in the past to have offshore fleet and fish under the umbrella of the EU fishing agreements in waters of third countries.

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³² COM (2009) 163 final: *Green Paper - Reform of the Common Fisheries Policy*, Brussels, 22.04.2009.

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