

E 4909

ASSEMBLÉE NATIONALE

TREIZIÈME LÉGISLATURE

SÉNAT

SESSION ORDINAIRE DE 2009-2010

Reçu à la Présidence de l'Assemblée nationale
le 9 novembre 2009

Enregistré à la Présidence du Sénat
le 9 novembre 2009

TEXTE SOUMIS EN APPLICATION DE L'ARTICLE 88-4 DE LA CONSTITUTION

PAR LE GOUVERNEMENT,

À L'ASSEMBLÉE NATIONALE ET AU SÉNAT

Proposition de décision du Conseil concernant la signature, au nom de la Communauté européenne, de l'accord relatif aux mesures du ressort de l'État du port visant à prévenir, contrecarrer et éliminer la pêche illicite, non déclarée et non réglementée (pêche INN).

COM(2009) 556 FINAL.



COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 16.10.2009
COM(2009)556 final

Proposition de

DÉCISION DU CONSEIL

concernant la signature, au nom de la Communauté européenne, de l'accord relatif aux mesures du ressort de l'État du port visant à prévenir, contrecarrer et éliminer la pêche illicite, non déclarée et non réglementée (pêche INN)

EXPOSÉ DES MOTIFS

Lors de la réunion du Comité des pêches de la FAO qui s'est tenue en 2007, il a été convenu d'élaborer un instrument international juridiquement contraignant relatif aux mesures du ressort de l'État du port visant à prévenir, contrecarrer et éliminer la pêche INN.

Une consultation d'experts a eu lieu sur cette question à Washington, en septembre 2007.

En juin 2008, le Conseil a adopté une décision autorisant la Commission à mener au nom de la Communauté européenne les négociations en vue de l'élaboration d'un tel instrument.

La FAO a par la suite tenu quatre consultations techniques, auxquelles pouvaient participer tous ses membres, dans le but de finaliser le projet d'instrument international relatif aux mesures du ressort de l'État du port. Lors de la quatrième session, qui s'est déroulée à Rome du 24 au 28 août 2009, les parties se sont mises d'accord sur une première version. Celle-ci a ensuite été revue par un comité de rédaction. Le texte doit maintenant être soumis aux instances compétentes de la FAO en vue de son adoption lors de la 36^e conférence de l'organisation, qui se tiendra à Rome du 18 au 23 novembre 2009 et pendant laquelle il devrait être ouvert à la signature.

Les mesures du ressort de l'État du port ont été reconnues comme un instrument fondamental dans la lutte de la communauté internationale contre la pêche INN, ce qui a en particulier poussé la FAO à adopter en 2005 le dispositif type relatif aux mesures du ressort de l'État du port dans le contexte de la lutte contre la pêche illicite, non déclarée et non réglementée. Ce dispositif type prévoit des normes minimales sur lesquelles les États doivent se fonder pour adopter des mesures visant à surveiller, contrôler et inspecter les navires de pêche battant pavillon étranger et souhaitant utiliser leurs ports. Il s'agit d'un instrument non contraignant, d'application facultative.

Par ailleurs, certaines organisations régionales de gestion des pêches (ORGP) ont mis en place des mécanismes contraignants applicables à l'État du port que les parties à ces organisations doivent mettre en œuvre pour contrôler la légalité des débarquements, transbordements et autres opérations effectués dans leurs ports. Certaines ORGP ont également adopté des règles spécifiques visant à refuser l'accès des ports aux navires inscrits par ces organisations sur la liste des navires ayant exercé des activités de pêche INN ou ayant facilité de telles activités.

La Communauté est membre de la FAO ainsi que de treize ORGP. Les mécanismes applicables à l'État du port adoptés au sein des ORGP ont été transposés en droit communautaire. Le droit communautaire prévoit aussi des règles générales régissant le débarquement de produits de la pêche par des navires de pays tiers dans les ports communautaires.

La lutte contre la pêche INN constitue un volet essentiel de la politique commune de la pêche et la Communauté doit pouvoir encourager la coopération internationale dans ce domaine en participant de manière active et constructive à l'adoption d'un instrument international relatif aux mesures du ressort de l'État du port.

La Communauté a participé au processus dès le départ et a joué un rôle actif et constructif dans l'élaboration de l'accord.

Proposition de

DÉCISION DU CONSEIL

concernant la signature, au nom de la Communauté européenne, de l'accord relatif aux mesures du ressort de l'État du port visant à prévenir, contrecarrer et éliminer la pêche illicite, non déclarée et non réglementée (pêche INN)

LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité instituant la Communauté européenne, et notamment son article 37 en liaison avec son article 300, paragraphe 2, premier alinéa, première phrase,

vu la proposition de la Commission¹,

considérant ce qui suit:

- (1) La Communauté européenne est compétente pour adopter des mesures de conservation, de gestion et de contrôle des ressources halieutiques et pour conclure des accords avec les pays tiers, ainsi que dans le cadre des organisations internationales.
- (2) La Communauté européenne est partie contractante à la convention des Nations unies sur le droit de la mer, qui fait notamment obligation à tous les membres de la communauté internationale de coopérer à la gestion et à la conservation des ressources biologiques de la mer.
- (3) La Communauté et ses États membres sont parties contractantes à l'accord aux fins de l'application des dispositions de la convention des Nations Unies sur le droit de la mer du 10 décembre 1982 relatives à la conservation et à la gestion des stocks chevauchants et des stocks de poissons grands migrateurs.
- (4) La quatrième consultation technique des parties à l'Organisation des Nations unies pour l'alimentation et l'agriculture (FAO), tenue à Rome du 24 au 28 août 2009 aux fins de l'élaboration d'un accord juridiquement contraignant relatif aux mesures du ressort de l'État du port visant à lutter contre la pêche INN, a débouché sur un projet d'accord à adopter conformément à l'article XIV de l'Acte constitutif de la FAO.
- (5) La Communauté européenne occupe une position de premier plan dans le domaine des pêches internationales et représente l'un des plus grands marchés de produits de la pêche dans le monde. Il est donc dans l'intérêt de la Communauté européenne de jouer un véritable rôle dans la mise en œuvre de l'accord et de signer ce dernier,

¹ JO C ... du ..., p. ...

DÉCIDE:

Article premier

La signature de l'accord relatif aux mesures du ressort de l'État du port visant à prévenir, contrecarrer et éliminer la pêche illicite, non déclarée et non réglementée est approuvée au nom de la Communauté européenne, sous réserve de la décision du Conseil relative à la conclusion dudit accord, dont l'adoption interviendra ultérieurement.

Le texte de l'accord est joint à la présente décision.

Article 2

Le président du Conseil est autorisé à désigner la ou les personnes habilitées à signer l'accord au nom de la Communauté européenne.

Fait à Bruxelles, le

*Par le Conseil
Le président*

ANNEX

AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE

ILLEGAL, UNREPORTED AND UNREGULATED FISHING

PREAMBLE

The Parties to this Agreement,

Deeply concerned about the continuation of illegal, unreported and unregulated fishing and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers, and the increasing need for food security on a global basis,

Conscious of the role of the port State in the adoption of effective measures to promote the sustainable use and the long-term conservation of living marine resources,

Recognizing that measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States and use all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing,

Recognizing that port State measures provide a powerful and cost-effective means of preventing, deterring and eliminating illegal, unreported and unregulated fishing,

Aware of the need for increasing coordination at the regional and interregional levels to combat illegal, unreported and unregulated fishing through port State measures,

Acknowledging the rapidly developing communications technology, databases, networks and global records that support port State measures,

Recognizing the need for assistance to developing countries to adopt and implement port State measures,

Taking note of the calls by the international community through the United Nations System, including the United Nations General Assembly and the Committee on Fisheries of the Food and Agriculture Organization of the United Nations, hereinafter referred to as FAO, for a binding international instrument on minimum standards for port State measures, based on the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the 2005 FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing,

Bearing in mind that, in the exercise of their sovereignty over ports located in their territory, States may adopt more stringent measures, in accordance with international law,

Recalling the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982, hereinafter referred to as the Convention,

Recalling the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995, the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 24 November 1993 and the 1995 FAO Code of Conduct for Responsible Fisheries,

Recognizing the need to conclude an international agreement within the framework of FAO, under Article XIV of the FAO Constitution,

Have agreed as follows:

PART 1

GENERAL PROVISIONS

Article 1

Use of terms

For the purposes of this Agreement:

- (a) “conservation and management measures” means measures to conserve and manage living marine resources that are adopted and applied consistently with the relevant rules of international law including those reflected in the Convention;
- (b) “fish” means all species of living marine resources, whether processed or not;
- (c) “fishing” means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (d) “fishing related activities” means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (e) “illegal, unreported and unregulated fishing” refers to the activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, hereinafter referred to as IUU fishing;
- (f) “Party” means a State or regional economic integration organization that has consented to be bound by this Agreement and for which this Agreement is in force;
- (g) “port” includes offshore terminals and other installations for landing, transshipping, packaging, processing, refueling or resupplying;
- (h) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

(i) “regional fisheries management organization” means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures; and

(j) “vessel” means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities.

Article 2

Objective

The objective of this Agreement is to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems.

Article 3

Application

1. Each Party shall, in its capacity as a port State, apply this Agreement in respect of vessels not entitled to fly its flag that are seeking entry to its ports or are in one of its ports, except for:

a) vessels of a neighbouring State that are engaged in artisanal fishing for subsistence, provided that the port State and the flag State cooperate to ensure that such vessels do not engage in IUU fishing or fishing related activities in support of such fishing ; and

b) container vessels that are not carrying fish or, if carrying fish, only fish that have been previously landed, provided that there are no clear grounds for suspecting that such vessels have engaged in fishing related activities in support of IUU fishing.

2. A Party may, in its capacity as a port State, decide not to apply this Agreement to vessels chartered by its nationals exclusively for fishing in areas under its national jurisdiction and operating under its authority therein. Such vessels shall be subject to measures by the Party which are as effective as measures applied in relation to vessels entitled to fly its flag.

3. This Agreement shall apply to fishing conducted in marine areas that is illegal, unreported or unregulated, as defined in Article 1(e) of this Agreement, and to fishing related activities in support of such fishing.

4. This Agreement shall be applied in a fair, transparent and non-discriminatory manner, consistent with international law.

5. As this Agreement is global in scope and applies to all ports, the Parties shall encourage all other entities to apply measures consistent with its provisions. Those that may not otherwise become Parties to this Agreement may express their commitment to act consistently with its provisions.

Article 4

Relationship with international law and other international instruments

1. Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of Parties under international law. In particular, nothing in this Agreement shall be construed to affect:
the sovereignty of Parties over their internal, archipelagic and territorial waters or their sovereign rights over their continental shelf and in their exclusive economic zones;
the exercise by Parties of their sovereignty over ports in their territory in accordance with international law, including their right to deny entry thereto as well as to adopt more stringent port State measures than those provided for in this Agreement, including such measures adopted pursuant to a decision of a regional fisheries management organization.
2. In applying this Agreement, a Party does not thereby become bound by measures or decisions of, or recognize, any regional fisheries management organization of which it is not a member.
3. In no case is a Party obliged under this Agreement to give effect to measures or decisions of a regional fisheries management organization if those measures or decisions have not been adopted in conformity with international law.
4. This Agreement shall be interpreted and applied in conformity with international law taking into account applicable international rules and standards, including those established through the International Maritime Organization, as well as other international instruments.
5. Parties shall fulfil in good faith the obligations assumed pursuant to this Agreement and shall exercise the rights recognized herein in a manner that would not constitute an abuse of right.

Article 5

Integration and coordination at the national level

Each Party shall, to the greatest extent possible:

- a) integrate or coordinate fisheries related port State measures with the broader system of port State controls;
- b) integrate port State measures with other measures to prevent, deter and eliminate IUU fishing and fishing related activities in support of such fishing, taking into account as appropriate the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and
- c) take measures to exchange information among relevant national agencies and to coordinate the activities of such agencies in the implementation of this Agreement.

Article 6

Cooperation and exchange of information

1. In order to promote the effective implementation of this Agreement and with due regard to appropriate confidentiality requirements, Parties shall cooperate and exchange information with relevant States, FAO, other international organizations and regional fisheries management organizations, including on the measures adopted by such regional fisheries management organizations in relation to the objective of this Agreement.

2. Each Party shall, to the greatest extent possible, take measures in support of conservation and management measures adopted by other States and other relevant international organizations.

3. Parties shall cooperate, at the subregional, regional and global levels, in the effective implementation of this Agreement including, where appropriate, through FAO or regional fisheries management organizations and arrangements.

PART 2

ENTRY INTO PORT

Article 7

Designation of ports

1. Each Party shall designate and publicize the ports to which vessels may request entry pursuant to this Agreement. Each Party shall provide a list of its designated ports to FAO, which shall give it due publicity.

2. Each Party shall, to the greatest extent possible, ensure that every port designated and publicized in accordance with paragraph 1 of this Article has sufficient capacity to conduct inspections pursuant to this Agreement.

Article 8

Advance request for port entry

1. Each Party shall require, as a minimum standard, the information requested in Annex A to be provided before granting entry to a vessel to its port.

2. Each Party shall require the information referred to in paragraph 1 of this Article to be provided sufficiently in advance to allow adequate time for the port State to examine such information.

Article 9

Port entry, authorization or denial

1. After receiving the relevant information required pursuant to Article 8, as well as such other information as it may require to determine whether the vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of such fishing, each Party shall decide whether to authorize or deny the entry of the vessel into its port and shall communicate this decision to the vessel or to its representative.

2. In the case of authorization of entry, the master of the vessel or the vessel's representative shall be required to present the authorization for entry to the competent authorities of the Party upon the vessel's arrival at port.

3. In the case of denial of entry, each Party shall communicate its decision taken pursuant to paragraph 1 of this Article to the flag State of the vessel and, as appropriate and to the