MEDAC - Registered Office Via XX Settembre, 20 - c/o MIPAAF - 00187 Rome (Italy) - Tax identification number 97534810581 - Association registered with the Prefecture of Rome as a legal entity n.1224/2017

Ref.:160/2021 Rome, 09 September 2021

MEDAC contribution to the Commission draft delegated act amending delegated act 2015/242

The functioning of MEDAC has improved over the years and reduced the gap between researchers, fishers, recreational fishers and NGOs too. Therefore, an explanation about the reasons behind this draft proposal and modifications to the existing delegated act should be provided, especially about where the MEDAC functioning failed and how this draft could improve the performance. The plurality of stakeholders who express their points of view is the basis of democracy. However, it is essential to understand the real common goal: the safeguarding and sustainable development of fishery activities.

The critical points raised on the draft delegated act amending delegated act 2015/242 are related to:

- Consideranda 5: "W*orking groups should be chaired, where possible, by representatives of the two categories of stakeholders. Advisory Councils should be empowered to designate a chairperson and vice-chairpersons from outside the Advisory Councils*." MEDAC does not agree with this proposal because the WGs are technical groups, and their objective is to debate and share opinions on various dossiers according to the annual workplan adopted by the ExCom members. For sure the 2 categories 60/40 shall be respected in the ExCom and in the presidency (the MEDAC has 1 president and 5 vice presidents, 3 coming form 60% and 2 from 40%). Although the MEDAC sought to comply with the required 60/40 composition of General Assemblies (as per 2(a) of Annex III to Regulation (EU) No 1380/2013), recognizes that this is more difficult to achieve for the General Assemblies when aiming at keeping the door open to any new eligible member, and then it is of greater importance that the balance in the ComEX is ensured.

- Art.4 parag 2: "*The chairperson may originate from outside the membership of the Advisory Council*." MEDAC is not in favour with this possibility because only the members of each AC are aware on the functioning of the ACs themselves: the deep knowledge of the mechanisms and the internal dynamics in each ACs, according to the current legislative framework, is provided only by the members of the AC itself.

- Art.4 parag. 7: "*The general assembly and the Executive Committee shall ensure a balanced and wide representation of all stakeholders, with emphasis on other interest groups and, where appropriate, small-scale fleets.* ***The number of representatives of small-scale fleets should reflect the share of small scale fleets within the fishing sector of the Member States concerned***." The MEDAC welcomes the attention paid by the EC to the SSF sector, however, is asking how this possibility referred to representatives of SSF could be better implemented especially in the Mediterranean sea, and highlights the current well-functioning of SSF representation in the AC (Cofradìas, Comités regionaux, Cooperative etc).

Disclaimer - This advice reflects only the MEDAC's view and the Commission is not responsible for any use that may be made of the information that it contains

info@med-ac.eu
+39 06.46.65.21.12 T

med-ac.eu
Via XX Settembre, 20
00187 Roma (Italy)

Co-funded by the European Union

- ANNEX- CLASSIFICATION OF MEMBERS (60-40%): This annex includes the main issues of all the draft delegated act. The MEDAC has a general comment about the suggestion of classification between 60 and the 40%: the major risk is the wording suggested, because it opens the ACs to a heterogeneous group and the professional fishery sector will be no more be interested in joining the ACs, although in principle the ACs have been created for the fishery sector.
Referring to the classification of 60%:

- Par. 1 letter d: "*at least 50% of the organisation's funding originates from undertakings active in the field of commercial fishing, aquaculture, processing, marketing, distribution or retail of seafood*." The MEDAC does not agree because it is not clear who can verify the source of the financing, taking into consideration that the ACs are not entitled in doing it.

- Par. 1 letter e: "*provided that one the criteria listed in point 1(a) to 1(d) is met, the organisation is active in the field of environment, consumers and human rights, health, promotion of equality or animal welfare*." It is not clear the reason behind this letter because at the beginning of the Annex it is stated that: "*An organisation shall be classified 'sector organisation' when at least one of the following criteria is met […]*"?

The rationale which led to the first amendment of Delegated Regulation (EU) 2015/242 by means of Delegated Regulation (EU) 2017/1575 included the need to "*further align the definition of the term 'sector organisations' to the wording of Article 45(1) of Regulation (EU) No 1380/2013 to avoid potential interpretative difficulties*". It should be recalled first of all, that the term "*sector organisations*" is always used to refer in the singular to the "fisheries sector". As stated, for example, in article 45 of Regulation (EU) No 1380/2013[1].

The legislative framework and the issues related to the definition proposed in this draft are deeply analysed in the attached Annex.

Moreover, the ACs legislation of reference is the EU Reg. 1380/2013 on the CFP and we do not deem appropriate to push aside the fishing sector.

Referring to the classification of 40%, the proposal is to enlarge the forum to: ". […] *energy production, extraction, tourism or conservation purposes*". In general speaking there could be the risk, if this annex will be adopted as it is, that the ACs are no longer addressed mainly to professional fishing and trade unions but it is open to a great variety of organizations.

- par.2 letter b: The MEDAC sees some criticalities in changing the composition of the OIGs. Fishery issues debated are complex and often driven by technicalities. MEDAC assumes that representatives from sectors, that do not have a specific stake and knowledge on fisheries (such as expected candidates from sectors like tourism, energy, marine transports) would only engage on issues related to marine spatial planning and would probably be not active and surely less informed to make

[1] 1. Advisory Councils shall be composed of:
(a) organisations representing the fisheries and, where appropriate, aquaculture operators, and representatives of the processing and marketing sectors;
(b) other interest groups affected by the CFP (e.g. environmental organisations and consumer groups).

decisions of fishery-related issues. However, the MEDAC recognizes the importance of being consistent with the "opened-door approach" that has been always adopted in the MEDAC. One possible solution could be to reject the proposal to extend the scope of OIGs but allow the participation of external stakeholders to the discussion on specific issues taking place in ACs.
On the other hand, the MEDAC strongly support the proposal to run external performance reviews for each AC, least every 5 years. These evaluations, and the requirement for an action plan to address any identified shortcomings, will undoubtedly contribute to improve ACs' contribution to the objectives of the CFP.

The MEDAC deems necessary to deeply revise the draft of the delegated act on the functioning of the ACs taking into account all the points raised on this advice. Especially the classification of members, par.1, letter d and e, and par.2 letter b of the annex should be deleted.

ANNEX

The aforementioned article 45 of the CFP Regulation is extremely clear and precise in its wording, leaving no room for misunderstanding, and as such the need to reinforce the clarity of the definition of "*sector organisations*" should therefore be interpreted as the adaptation and clarification referred to in Delegated Regulation (EU) 2015/242[2], with respect to the contents of Regulation (EU) No 1380/2013.

In any case, the definitions fully coincide in the two legal texts, given that the 2013 text referred to "*organisations representing the fisheries operators*" and the 2015 text "*Sector organisations means organisations representing the fishermen*".

These interpretation problems have therefore never arisen. It follows that the intention to solve the alleged problem with the amendment of Delegated Regulation (EU) 2015/242 by implementing Delegated Regulation (EU) 2017/1575 was entirely unnecessary and therefore inappropriate.

The statement in the latter delegated regulation regarding the need to "*grant both categories*[3] *the right to decide autonomously on their representation in the executive committee and thus guarantee a balanced representation of all stakeholders in the Advisory Councils*" is equally incomprehensible.

This approach would mean that any party interested in participating in an Advisory Council could decide in which of the two categories to be inserted, regardless of its profile, in accordance with the

[2] Delegated Regulation (EU) 2015/242 established, *inter alia*, two key objectives:
- To define the procedure for the start of the functioning of new advisory councils.
- To ensure that their structure guarantees a balanced representation of all legitimate stakeholders in the field of fisheries.

[3] This naturally refers to the two categories that make up the Advisory Councils:
- Organisations representing the sector
- Other interest groups affected by the CFP

provisions of article 45 of Regulation 1380/2013 as corroborated by article 2 of Delegated Regulation (EU) 2015/242.

However, this is a decision which rests with the General Assembly, as established according to the amendment to article 4 introduced by Delegated Regulation (EU) 2017/1575, with the addition of point (c) which states: "*The general assembly of an Advisory Council shall decide on the classification of the members of the Advisory Councils under the categories "sector organisations" or "other interest groups…*".

It should also be pointed out that the main amendment introduced was in Article 2 (2) concerning the definition of what is to be understood by "*sector organisations*", which changed from "*organisations representing the fishermen*" to "*organisations representing the fisheries sector*".

However, in either case, it would be impossible to be more specific.

The most significant change was made in the second part of this definition, with the removal of the need to include specific references in the case of the Aquaculture Advisory Council.

It can be noted that the wording in the 2015 text included this specification ("*Sector organisations means organisations representing the fishermen* ***and, for the aquaculture Advisory Council****, aquaculture operators and representatives of the processing and marketing sectors*"), which became less precise in the wording of the 2017 text: "*Sector organisations means organisations representing the fisheries (including employed fishermen)* ***and, where appropriate, aquaculture operators****, and representatives of the processing and marketing sectors*".

This correction did not make any sense, principally because the Aquaculture Advisory Council had already been established and had started functioning a year after the publication of Delegated Regulation (EU) 2015/242, pursuant to the Communication from the European Commission (2016/C 74/01) published on 26 February 2016 in the OJEC.

Therefore, the definition contained in the 2015 Delegated Regulation was entirely correct and appropriate, while its amendment one year after the establishment of the Aquaculture Advisory Council was entirely without foundation.

Recital (6) of the proposed Delegated Act begins to illustrate the rationale justifying an amendment that, in essence, seeks effectively to deprive the fisheries advisory councils of their powers, given that this alleged need, which it is claimed exists, to further specify the criteria used to classify members into the two categories of stakeholders is absolutely non-existent and, therefore, completely pointless.

This is reflected in the contents of article 45 of Regulation 1380/2013, and in Delegated Regulations (EU) 2015/242 and 2017/1575.

This inadequate and biased line of reasoning continues in recital (7), which is fallacious and tendentious in its approach. The text is manipulated in a self-referential manner, distorting its

content, in an attempt to avoid the specific clarification pursuant to article 2 (2) of Delegated Regulation (EU) 2015/242.

The plural is used in order to make the "sector organisations" themselves less well-defined. In other words, and as noted above, the expression "the sector" refers specifically to the "fisheries sector" and/or to "fishermen", and not to other activities which may be related thereto in some way (suppliers of products or services, etc.). The specific definition used in Regulation 1380/2013, as well as in Delegated Regulations (EU) 2015/242 and 2017/1575, is clear, strong and unambiguous.

When an attempt is made to introduce the plural expression "sectoral organisations", the intention is that of expanding this specific, definite category to activities other than fisheries, i.e., to other sectors. This is done with the sole intention of depriving fisheries and fishermen of their central role, while confusing and fragmenting their representation in bodies which have been established to ensure consultation and dialogue with the EC institutions and the Member States.

In other words, the nomenclature is subtly altered and made plural in order to include other sectors, those "*operators carrying out any of the activities related to the different stages of production, processing, marketing, distribution and retailing*", broadening the spectrum beyond any reasonable consideration of the interests of the fisheries sector.

So much so that it goes so far as to include completely absurd examples such as "*fishing net manufacturers or ice producers*", forgetting that these indirect interest groups, which are affected by the CFP, already have their own category, as established and regulated in the aforementioned regulations.

In this senseless exercise which attempts to sketch a non-existent scenario, recital (8) proceeds to address the issue of the percentage that makes it possible to ascertain whether an organisation is representative of the fisheries sector or not, stating that it is sufficient that 50% of its members have an interest, direct or indirect, in the (fisheries) sector, or that at least 50% of its funding comes from fisheries, opening the door to organisations with different composition profiles and interests being considered as representative of fisheries activities.

This is an approach that seeks to prepare the ground for what will come in recital (9), in which the manipulation of the concepts and of the tenets of the reference regulation continues; the aim is simply that of diluting the sector organisations, the fishermen and their representativeness, by introducing "other interest groups" into this category.

And as if that were not enough, it is stated, albeit implicitly, that the advisory councils do not function in a balanced way and this is the argument used to justify the call to introduce most of those organisations that until now had been classified as "*other interest groups*" into the sector organisations (sectoral organisations in the new nomenclature).

The end result is that the composition of the Advisory Councils will now only have one category of members, the "*sectoral organisations*", made up of all the "*interest groups affected by the CFP*", thus eliminating representation of the sector, i.e., representation of fishermen.