

Disentangling the legal basis of multiannual fisheries plans

Multiannual fisheries management plans will be central to the success of the new Common Fisheries Policy (CFP), which came into force in 2014. But for a long time these plans have been caught in a metaphorical net: a disagreement between the European Parliament and the Council of Ministers regarding the legal basis for their adoption. Central to this has been the question of the extent of the European Parliament's co-legislative powers in fisheries decision-making.

This very topic has been the subject of a legal challenge by the Parliament and the European Commission against the Council.¹ In 2012 the Commission made a proposal for a set of amendments to the 2008 multiannual cod plan² for the Atlantic and North Sea to address shortcomings identified by the Scientific, Technical and Economic Committee for Fisheries (STECF), a body which provides scientific advice to the Commission. However, the Council hived off part of this proposal and adopted an amending regulation³ single-handedly, without the Parliament. The Council claimed it was able to do this under Article 43(3) of the Treaty on the Functioning of the European Union (TFEU), which gives it the exclusive competence to adopt measures on the fixing and allocation of fishing opportunities. After all, the measures it had adopted were, it argued, just that. However, the European Parliament and the Commission claimed that, in fact, multiannual plans in their entirety, as fish stocks conservation and management tools, contain provisions necessary for the pursuit of the CFP's objectives. This, they argued, means they make policy choices which should fall under Article 43(2) TFEU and the ordinary legislative (co-decision) procedure contained within it. In other words, decisions on multiannual plans require the agreement of both the Parliament and the Council.

After a long wait the results are in. The Court held that the amendments contained in the 2012 regulation did not only have the effect of merely fixing fishing opportunities but instead were wider. The Court explained that the amendments were "intended to adapt the actual mechanism for setting TACs and fishing effort limitations" and therefore "define the legal framework in which fishing opportunities are established and allocated". As such, they result in a policy choice

¹ In Joined Cases C-124/13 and C-125/13 *European Parliament and European Commission. v. Council of the European Union*

² Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No 423/2004

³ COUNCIL REGULATION (EU) No 1243/2012 of 19 December 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks

having a long-term impact on the multiannual recovery plan for cod stocks and therefore fall under the ordinary legislative process in Article 43(2) TFEU. This means that by single-handedly adopting the amendments, the Council acted beyond its powers and adopted the regulation on the wrong legal basis. The outcome? In a move that is sure to keep EU fisheries lawyers busy, the 2008 regulation is to be annulled. But not yet.

The Court agreed that for reasons of legal certainty and to avoid serious consequences for the economic operators involved, the regulation should remain in place for 12 months from 1 January 2016. But this judgment is about more than just the 2008 cod plan. The Court's decision effectively means that multiannual plans must be decided by both the Parliament and the Council under the Article 43(2) TFEU legislative procedure because these plans, by their very nature, pursue the objectives of the CFP and involve policy choices. The decision therefore answers an important question about the balance of legislative power. With multiannual plans being a key element of the reformed CFP, and with the recent valuable input of Parliament in relation to the Baltic multiannual plan proposals,⁴ this has come at crucial moment. In light of the Court's decision, the co-legislators should now be able to disentangle themselves from the issue of who has the competence to make multiannual plans and navigate smoother waters in the adoption of future plans – together.

⁴ See ClientEarth Legal Briefing '[Complying with Article 2\(2\) of the CFP basic regulation in the Baltic multiannual plan](#)'

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