

## **Relations between on the one hand rights and responsibilities of the EU Member States in the waters under their jurisdiction or sovereignty or over the fishing ships flying their flag on the High Seas, on the other hand the European Union Common Fisheries Policy**

### **Introduction**

First of all, the Member States of the European Union are parties to the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS lays down legal regimes governing, in particular, the exclusive economic zone, the territorial sea and the high seas:

- Concerning the exclusive economic zone, the Coastal State has sovereign rights on fisheries, meaning that it is free to grant access or not to ships flying a foreign flag and to adopt any measures relating to the conservation of marine resources.
- Such sovereign rights obviously exist within the territorial waters where the sovereignty of the coastal State is full.
- Finally, on the high seas, the States exercise jurisdiction over the ships flying their flag pursuant to Article 94 of UNCLOS.

By virtue of the TFEU, 28 European States have established a European Union on which they have conferred competences to attain objectives they have in common.

Pursuant to Article 3 TFEU, second treaty funding the EU, the Member States conferred exclusive competence on the Union in the conservation of marine biological resources under the Common Fisheries Policy.

To answer the question on the relation between Common Fisheries Policy and sovereign rights of the EU member states

### **1. The establishment of the Common Fisheries Policy entails a lowering of the sovereign rights of the Member States of the European Union.**

The first point to be mentioned is that the EU has not only competence to act regarding 'the conservation of marine biological resources under the common fisheries policy', but also an exclusive competence to do so. From a legal point of view, this goes very far, since according to TFEU, 'when the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts.'

In the framework of an exclusive competence like the fisheries policy, the Member States as a general rule cannot therefore intervene even longer. In other words, all the measures relating to conservation and sustainable exploitation of marine biological resources are in principle adopted by the Union alone.

Secondly, the geographical scope of the Common Fisheries Policy. The European legislation does not use the customary international law terminology for describing and defining member States' maritime

zones but sets out that the Common Fisheries Policy shall apply to the activities of exploitation of biological resources which are carried out:

- On the territory of Member States to which the Treaty applies
- In Union waters, including by fishing vessels of third States
- By Union fishing vessels outside Union waters.

The terms “union waters” means the waters under the sovereignty or jurisdiction of the Member States. Without using the words EEZ or territorial waters, the words “union waters” are referring to them. The internal jurisdiction competence of the US is therefore clearly asserted not only on the national territorial waters, but also on the national EEZ. The competence of the EU legislation was also assented with regard to the High Seas over EU ships. Insofar as the Member States have similar authority under public international law, to fishing vessels flying their flag carrying out their activities on the high seas.

Finally, under this part of my presentation, I should mention the most important consequences from a judgement of the European Court of Justice of 1977 whereby the EU fishermen have the right of equal access to the fishing grounds of all member States, a right which flows from the strict application of the non-discrimination principle which is applicable to the same geographical area as the Treaty itself. As a result, any extension of the maritime zones automatically means the application of relevant EU legislation to the same extension of the area.

#### **Our mechanisms which limit, to a certain extent, this transfer of sovereignty**

First, there are some exceptions to the principles of equal access, since in the waters of up to 12 nautical miles from baselines, Member States are authorised until 21 December 2022 to restrict fishing to fishing vessels that traditionally fish in those waters from port on the adjacent coast.

The second exception which is provided or again by the EU legislation, a Member State may adopt measures for the conservation of fish stocks in union waters provided that those measures:

- Apply solely to fishing vessels flying the flag of that Member State; and
- Are compatible with the objectives set out in the Common Fisheries Policy

Third point that is worth mentioning, the delimitation itself of the territorial waters and of the EEZ does not fall into the remit of the European Union. ECJ wouldn't be competent to sort out territorial disputes between EU Member States since there is no conferral of competence in this field.

Fourth and last, exception which relates to the control and enforcement of EU legislation (Article 73 of UNCLOS). It falls certainly to the EU to set out the general framework of the control of the implementation of the Common Fisheries Policy as well as the tools enabling that enforcement.

It remains that the general principle governing the EU fisheries control system gives a predominant role to the EU Member States. Allow me to identify some of the main principles:

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- Member States control the activities carried out by any natural or legal person within the scope of the Common Fisheries Policy on their territory and within waters under their sovereignty or jurisdiction;
- Member States also control access to waters and resources and control activities outside Union waters carried out by the EU fishing vessels flying their flag;
- Member States must adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring control, inspection and enforcement of activities carried out within the scope of the Common Fisheries Policy;
- In each Member State, a single authority coordinates the control activities of all national control authorities; and
- It falls to member States to establish effective, proportionate and dissuasive penalties within a view to punishing non-compliance with the EU rules.

**Conclusion**

The EU is a party to UNCLOS since 1998. In accordance with Annex IX to UNCLOS which deals with the participation by international organisations, the instrument of formal confirmation of the EU contains a declaration specifying the matters governed by the Convention in respect of which competence has been transferred to the EU by its Member States.

In this respect, the EU has declared that its member States have transferred competence to it with regard to the conservation and management of fishing resources, which underlines that the relevant rules are enforced by the Member States.

This declaration contains also a list of matters in respect of which the EU shares competence with the member States, in particular in the field of maritime transport, safety of shipping and the prevention of marine pollution.