

**MiNa-Council**  
**Environment and Nature Council of Flanders**

**Advisory opinion on the  
broad lines that emerged**

**on 3 June 2003**

**concerning**

**the regional advisory councils in the con-  
text of the Common Fisheries Policy**

## I. Introduction

On 20 December 2002 the EU Council of Fisheries Ministers took a number of decisions involving a reform of the Common Fisheries Policy. These decisions are featured in three Regulations and apply to various reform measures<sup>1</sup>.

With a view to finding out more about the issue, the MiNa-Council staged two hearings on 9 July 2002 to consider the topic of Belgian sea fisheries and the European Commission's reform plans announced on 27 January 2003 in the light of the actual reforms decided upon by the EU Council of Fisheries Ministers<sup>2</sup>.

The Council planned to prepare several advisory opinions about the issue and to focus the first opinion on setting up regional advisory councils (RACs). The arguments for this decision are obvious: as an environmental advisory body, the MiNa-Council feels an affinity with the RACs due to be set up. From this viewpoint the MiNa-Council has also proceeded in the past to draw up opinions about similar issues. What is more, the European Commission is set to act before the end of 2003 to table a proposal on RACs. The MiNa-Council is planning to make a contribution to this. This opinion is naturally addressed first of all to the Flemish and Belgian authorities.

In the present context, the MiNa-Council is keen on confining itself to an opinion on the broad lines plus recommendations about delimiting the scope and composition and the operating procedures of the RACs. In the light of the European Commission's proposal at the end of 2003, the Council will decide whether a more extensive advisory opinion should be issued.

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Chairman

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<sup>1</sup> Council Regulation (EC) No 2369/2002 of 20 December 2002 amending Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector, Official Journal, L 358/49-56, 31.12.2002.

Council Regulation (EC) No 2370/2002 of 20 December 2002 establishing an emergency Community measure for scrapping fishing vessels, Official Journal, L 358/57-58, 31.12.2002.

Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, Official Journal, L 358/59-80, 31.12.2002.

<sup>2</sup> MiNa-Council, Reports on the hearings of 9 July 2002 and 27 January 2003 concerning Belgian sea fisheries and the reform of the Community fisheries policy, 2003/still not published.

## II. Opinion

### 2.1. The regional advisory councils.

**[1] Setting up regional advisory councils (RACs).** The RACs are to be set up in accordance with art. 31 and 32 of Regulation 2371/2002:

- RACs shall be established to advise the Commission on matters of fisheries management in respect of certain sea areas or fishing zones.
- RACs shall mainly consist of fishing operators and representatives of other groups with an interest in the Common Fisheries Policy, such as the fisheries and aquaculture sectors, environmental protection and consumer interests and scientific experts from all Member States with fishing interests in the sea area or fishing zone concerned.
- Representatives of national and regional administrations with fishing interests in the sea area or fishing zone in question are also entitled to take part as members or observers in the RACs. The Commission may attend meetings.
- RACs may be consulted by the Commission in respect of proposals for measures, such as multiannual recovery or management plans, which the Commission is planning to present and have specific relevance for fish stocks in the area in question. They may also be consulted by the Commission and by the Member States in respect of other measures.
- The RACs may also
  - o submit recommendations and suggestions, of their own accord or at the request of the Commission or a Member State, on matters relating to fisheries management to the Commission or the Member State concerned;
  - o inform the Commission or the Member State concerned about problems relating to the implementation of Community rules and submit recommendations and suggestions addressing such problems to the Commission or the Member State concerned;
  - o conduct any other activities necessary to fulfil their functions.
- Procedure for the establishment of RACs:
  - o The Council shall decide on the establishment of a RAC.
  - o An RAC shall cover sea areas falling under the jurisdiction of at least two Member States.
  - o An RAC shall establish its own rules of procedure.

**[2] Other European Commission proposals.** On 28 May 2002 the European Commission published a number of proposals<sup>3</sup>, which provide an indication of the proposals the European Commission will table at the end of this year:

- Membership rules will be flexible enough so as to ensure participation of all parties with a real interest in the fisheries issues concerned, although the configuration of interested parties will vary according to the subject to be addressed by the RAC. At the broadest level, membership would include

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<sup>3</sup> The European Commission, Reforming the Common fisheries policy, 28 of May 2002, [http://europa.eu.int/comm/fisheries/reform/governance\\_1\\_en.htm](http://europa.eu.int/comm/fisheries/reform/governance_1_en.htm)

fishermen's organisations, scientists, the relevant national, regional or local administrations, environmental and other interested NGO's, representatives from aquaculture and processing, non-professional fishermen, the whole-sale industry and employees in the fisheries sector.

- The Commission and Member States will not be bound by the recommendations, opinions or reports of the RACs but may explain in the explanatory memorandums of their proposals how they dealt with the opinion given by the competent RAC.

## 2.2 General

**[3] Positive assessment.** The MiNa-Council welcomes the creation of RACs as a contribution to achieving the aims of the fisheries management reform. These RACs should play a key role in creating a balanced and democratic fisheries policy. Hitherto, the policy was primarily determined by a) scientists substantiating or drawing up proposals and b) politicians taking decisions. The target groups with a real interest in fishing issues have only been involved in policy-making on an ad hoc and informal basis. The MiNa-Council therefore wants the RACs to be structured bodies that are taken seriously by the authorities.

The RACs should first and foremost be fora where the target groups can put their views across about the various proposals made by the different administrations, where they can learn the views of other target groups, and where they can seek a draft consensus in consultation with the other target groups. The MiNa-Council concludes from the European Commission's May 2002 proposals that the RACs will also act as a testing ground where the various stakeholders can voluntarily commit themselves to specific initiatives that may subsequently develop into fully-fledged policy instruments.

The MiNa-Council is looking to the RACs to contribute to a fisheries policy that is a close reflection of the real situation and to have the drive to extend the basis of the fisheries policy. This will help to improve the implementability and the rules and effectiveness of the control process.

The MiNa-Council is keen to stress that the creation of RACs is only partly an expression of the principles of public participation and information in accordance with the Aarhus Convention on access to information, public participation in the decision-making process and access to the courts concerning environmental matters<sup>4</sup>.

As for the target group policy, the MiNa-Council makes a specific reference to the Implementation plan of the WSSD<sup>5</sup> (Art. 146 a), stating that countries shall facilitate full public participation in preparing and implementing a sustainable development policy, in

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<sup>4</sup> In addition to structured consultations with organised civil society, a provision must also be made in particular for general public access to information, a dialogue between the authorities and the general public, etc.

<sup>5</sup> Johannesburg World Summit on Sustainable Development (WSSD), from 26 August to 4 September 2002, Implementation plan, Translation for the MiNa-Council, 16 September 2002, 60 p., only published on the website.<http://www.minaraad.be/studies/Johannesburg%20finale%20vertaling.pdf>

other words, the participation should coincide with the drawing up of policy documents.

Lastly, the MiNa-Council draws attention to the need to ensure that the activities of the advisory council are not undermined by specific forms of bilateral consultations between the administration seeking advice and parties that are themselves also involved in providing the advice. In this context, the Council is particularly referring to consultations that may be interpreted as advantageous for one or more parties.

### 2.3 General principles

**[4] The ecosystem approach.** The incentive to apply the ecosystem approach by 2010, with due regard to the "*Reykjavik Declaration on responsible fisheries in the marine ecosystem*" and "*Decision 5/6 of the Biodiversity Treaty*", is a component of the WSSD implementation plan that is required to ensure the sustainable development of oceans, seas, coastal areas and fisheries.

The FAO<sup>6</sup> Code of Conduct for Responsible Fisheries also lays down principles and international standards of behaviour for responsible fisheries so as to ensure the effective protection, management and development of living aquatic sources, with due respect for the ecosystem and biodiversity.

The MiNa-Council therefore states that the ecosystem approach should also become a general principle for the RACs. This principle has to be reflected in as many areas as possible, such as delimiting the scope, the composition, the tasks, etc.

**[5] Three-tier structure.** In keeping with its earlier position on integrated water policy<sup>7</sup> and integrated management of coastal areas<sup>8</sup> the MiNa-Council repeats its call for a three-tier structure to be adopted so as to develop the fisheries and marine environment management policy. On the basis of this three-tier structure, the MiNa-Council wishes to guarantee that the social consultations will be given the prominence they deserve in the forum provided for this purpose.

In the light of this three-tier structure, a distinction is made between an administrative, an official and an advisory body. The Council regards the administrative body to be at the political level and responsible for the matter under discussion (in this case decision-making bodies in the European Community, the national or federal state and/or the region, in this case the Flemish Region).

The MiNa-Council considers the official body to be a formal and permanent structure responsible for preparing and implementing policy. The advisory body, in this case the

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<sup>6</sup> FAO, Code of Conduct For Responsible Fisheries, <http://www.fao.org/fi/agreem/codecond/codecon.asp>

<sup>7</sup> MiNa-Council, Opinion of 5 May 1994 on the preliminary draft decree concerning the catchment area policy and the protection of surface water against pollution, instal. 1994/5, 27 p.  
MiNa-Council, Opinion of 21 December 1999 concerning guiding principles for an integrated water policy, instal. 1999/28, p.44/54.

<sup>8</sup> MiNa-Council, Opinion of the 5th of April 2001 on Integrated Coastal Zone Management (ICZM), 2001/13, p.17/23.

RAC, is a forum where the various stakeholders, and they alone, consult and decide positions on proposals made by the official body. Consequently, the administrative body may take informed decisions. A three-tier structure has implications for the composition and rules of procedure of the RAC. This is given more detailed consideration further on in the opinion. There has to be an organisational system of coordination between a) the structures of EU fisheries policy and b) the scientific advisory body of ICES<sup>9</sup>.

## 2.4 Regional delimitation of the territorial scope

**[6] Regional delimitation.** The Regulation specifies that the scope of a RAC covers sea areas falling under the jurisdiction of at least two Member States. Information provided by the European Commission (DG FISH/D/1) shows that this may apply both to the EEZ<sup>10</sup> and the territorial seas of the Member States.

A regional delimitation is important and necessary so as, for example, to be able to offer appropriate opinions about fishing quotas. The fields of application may be determined from various angles. No delimitation approach will be straightforward, however, as peripheral areas invariably exert an influence on the central area. Consequently, if the delimitation is too strict it runs the risk of missing relevant information. In any event, the MiNa-Council wants to see an optimal number of RACs for fisheries.

In view of the general starting point for the ecosystem approach, the MiNa-Council feels the ecosystem approach has to be applied in the case of the delimitation. The MiNa-Council is definitely not a supporter of the "one-species" approach where the stock of one species forms the basis for the delimitation. Nor should the fisheries issue be addressed through an approach where a few species form the basis. This approach gives a partial picture of the situation and the scientific justification for the linking of a few fish stocks has also been questioned. This approach would straightaway mean repeating the errors of the past. The approach based on the type of fishing operation is too "sector-specific", and is likely to run into many problems within the "fishery" itself because many types of fishery operate alongside each other. Moreover, the fisheries sector is constantly changing so that new types of fisheries are constantly being developed.

**[7] Delimitation according to the ecosystem approach.** By agreeing to adopt the ecosystem approach as the basis for delimiting the scope of the RACs, the MiNa-Council holds that the RACs have to be active in areas stretching from the low-water level to the EEZ.

In spite of the call for a coordination of the three-tier structure and the tasks of ICES, the aim is not to have the ICES fishing areas coincide with the delimitation of the territorial scope. The delimitation has the potential to be useful in the case of the working groups that may be created. In the specific case of the North Sea, the MiNa-Council believes all the EEZs of countries bordering on this Sea should be managed as one region.

## 2.5 Determining responsibilities

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<sup>9</sup> ICES: International Council for the Exploration of the Sea

<sup>10</sup> EEZ: Exclusive Economic Zone

**[8] Broad advisory responsibilities are welcome.** The RACs issue advisory opinions about fishery management matters. These responsibilities apply at European, national and regional levels: the European Commission and the Member States might seek their advice about proposed measures. There is also a right of initiative.

In addition to the tasks of issuing opinions a RAC may also inquire about the implementation of common measures and present relevant recommendations and rules. The RACs may carry out all activities that are required to complete their tasks.

The MiNa-Council supports a broad delimitation of the (potential) responsibilities and above all welcomes the right of initiative enjoyed by the RACs.

**[9] No obligation to seek opinions.** The MiNa-Council notes that neither the Council, as regards setting up the RACs in Regulation 2371/2002, nor the European Commission, in the additional proposals of 28 May 2002, refers to an obligation to seek an opinion. The MiNa-Council believes that a well-respected advisory body should have at least a remit. Consequently, the MiNa-Council wants the European Commission proposals due to appear at the end of 2003 to feature a list with applications for opinions.

**[10] Advise about non-fisheries matters.** The hearings revealed that many activities (dumping sites of dredged materials, offshore wind parks, nature conservation at sea ...) in the marine environment might have major impacts on fisheries and in a broader perspective on the marine ecosystem. The MiNa-Council thinks there should invariably be scope within the RACs for advising about these activities in a specific sea area or fishing zone. This scope for advising does not necessarily imply the obligation to seek a request, but can also be provided for by the RACs' right of initiative and the positive approach to this by the relevant administrations. This means, for example, that the relevant administrations should act in response to a request and voluntarily provide the necessary information and if necessary explain why specific items of information are not available.

## 2.6 Structure of a RAC

**[11] A nucleus.** In its proposals of 28 May 2002 the European Commission suggests that the Member States of an RAC should adopt a flexible approach. The composition should be able to change in the light of the subject.

The MiNa-Council is convinced that an RAC should consist of a nucleus where the most relevant interest groups are represented, amplified by experts that may be invited for specific subjects. This nucleus has to be able to assess fishing matters, with due regard to the interests of all the interest groups and the components of an ecosystem approach.

The MiNa-Council believes a flexible composition is also necessary for advising about non-fishing matters. In this case there also seems an obvious need to involve the relevant sectors.

## 2.7 Composition

**[12] General starting points.** As already stated in the context of the “integrated water policy”<sup>11</sup>, the MiNa-Council recommends a number of specific rules to govern the configuration of advisory bodies:

- The MiNa-Council wants all interest groups and/or sectors to be involved on an equal footing and therefore to be consulted by the advisory body;
- Hence attention has to be paid to the need to strike a balance in the participation of all consumers in relation to each other. It should also be ensured that geographical, national and regional pattern of distribution are correctly represented.

**[13] Members and observers.** Regulation 2371/2002 lists the members or observers of RACs as:

- fisheries and aquaculture;
- environmental and consumer interests;
- scientific experts from all Member States with fishing interests in the sea area or fishing zone in question;
- national and regional administrations with fishing interests in the sea area or fishing zone in question;
- the European Commission.

Provided the last three groups are represented, the MiNa-Council can agree with this, but it also supports the idea in the European Commission's proposals of 28 May 2002 of allowing a seat on a RAC to be earmarked for:

- the processing industry;
- representatives of non-professional fishermen;
- the wholesale sector;
- employees in the fisheries sector.

It nonetheless insists that the term "representative of fishery" interests should be clarified to show that this is representative of all types of fisheries. It should also be made clear that both ship-owners and fisherman are represented.

The MiNa-Council also recommends allowing multilateral organisations, such as ICES and the FAO to attend as observers.

**[14] Scale of the advisory councils and the level of membership.** The MiNa-Council thinks the scale of the RACs should be such that the effectiveness of the meetings and the forum activities, the participation of the target groups, can be guaranteed. The MiNa-Council notes that an RAC has to be comprised of a limited number of members. As a result, the representation of some interest groups will have to be ensured at EU level and cannot be the sum of national interest groups. This means that the interest groups themselves will have to organise participation on an internal basis. As the pri-

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<sup>11</sup> MiNa-Council, Opinion of 3 May 2001 about the cooperation of the International Commissions for the Protection of the Meuse River and the Schelde River with NGOs, interest groups and sectors, ed. 2001/16, p.5-6/6.

mary aim of the RACs is to "*advise on matters of fisheries management in respect of certain sea areas or fishing zones*" care has to be taken to avoid the "fishermen" target group being underrepresented.

The MiNa-Council supports the European Commission's idea that States with fishing interests in the field of application should have representatives in the RAC.

The RACs need to be comprised of voting members and non-voting observers and experts.

**[15] Representation of administrations.** Earlier in this opinion the MiNa-Council called for a clear three-tier structure. Mixing official and/or political structures in the advisory bodies results in a situation where official and political representatives are "judge and party"<sup>12</sup>. Regulation 2371/2002 provides for a mix of (official and political) representatives of administrations in the advisory body.

The MiNa-Council basically accepts the official representation of administrations in RACs as observers. For the same reason, the MiNa-Council agrees with the scope for allowing a European Commission representative to attend meetings as an observer.

At the invitation of the advisory body, competent politicians may take part as non-voting experts in meetings. Politicians or civil servants (involving a "judge and party" situation) should in no circumstances be allowed to take part in RACs as representatives of interest groups.

**[16] Scientific input.** The MiNa-Council believes the RAC must be responsible for the social review of the official proposals. The official proposals, together with the social review are submitted to the political authorities for a decision. Official proposals need to be backed up with scientific evidence. Even so, the MiNa-Council thinks the scientific community has to be represented in the RACs so as to be able to review the scientific accuracy of the proposals. The MiNa-Council therefore wants a non-voting representation of scientific experts. In the case of a scientific review of a sustainable fisheries policy, all aspects of sustainability have to be reflected in the scientific expertise.

The MiNa-Council also sees a need to develop rules so that the broadest possible range of expert approaches is represented in the advisory council.

Lastly, the MiNa-Council is anxious to stress that the input of the scientific community has to be encouraged so as to guarantee and maintain a high level of participation.

## 2.8 Operating procedures

**[17] General starting points.** The MiNa-Council has already proposed a specific number of rules for the operating procedures of cross-border advisory bodies<sup>13</sup>:

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<sup>12</sup> The expression "judge and party" means that officials may vote on their own proposals and politicians are able to influence opinions addressed to themselves

<sup>13</sup> MiNa-Council, Opinion of 3 May 2001 about the cooperation of the International Commissions for the Protection of the Meuse River and the Schelde River with NGOs, interest groups and sectors, ed.

- in an opinion the representatives of the stakeholders shall express their areas of agreement and also their differences of opinion;
- should the administration seeking the opinion be in disagreement, it should justify its different decision.

In its proposals of 28 May 2002 the European Commission specifies that it and the Member States may explain how they dealt with the advice given. The MiNa-Council thinks this is not formal enough to be able to speak of a credible participation of the stakeholders. In the case of requested opinions, it is in favour of the obligation to justify decisions, so that various administrations must duly state the reasons for not following the advice sought.

The obligation to justify decisions cannot be imposed in the case of differences of opinion to do with own-initiative opinions. The Council nonetheless suggests that the European Commission's forthcoming proposals should include a "recommendation to state the reasons" for own-initiative opinions.

The MiNa-Council supports the European Commission's proposal that the Commission and the Member States should not be bound by recommendations, opinions or reports of the RACs.

The MiNa-Council also agrees with the proposal that the RACs should themselves establish the rules of procedure, with due regard to a number of minimum requirements, such as a reference to minority views.

**[18] Support for the RACs.** The MiNa-Council insists on the need for support to be given to the RACs for the sake of guaranteeing the credibility of the participation and the even-handed treatment of the various stakeholders. With this in mind, the MiNa-Council believes this implies:

- providing a secretariat that can operate independently of the political administrations, official government departments and target groups;
- providing appropriate logistical and financial resources for the running of the secretariat and the RAC;
- financial support in respect of stakeholders so that all groups are able to participate on an equal footing.