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Dear MEP ,

On behalf of Working Group 2 of the Long Distance Fleet Regional Advisory Council (LDRAC WG2) we want to turn your attention to the fact that there are a number of unresolved issues between the EU and Norway in the Arctic which are important to EU citizens and stakeholders. The Union has not yet developed an effective framework to deal with these issues.

In this letter we deal mainly with questions concerning fishing as this is our area of expertise but there is an urgent need to address the relations between the EU and Norway in the Arctic as a whole – especially in Svalbard and maritime zones around the archipelago.

#### EXECUTIVE SUMMARY

**Norway is an important Northern European partner for the Union. At the same time, Norway, a coastal state in the region, plays a dominant role in the administration of Arctic waters, basing on the fact that it is a coastal state and has secured additional privileges for itself. In our opinion, Norway tends to abuse its position.**

**In the case of the fisheries in the area around the Svalbard archipelago, Norway violates the rights of the member states of the European Union, and discriminates against the EU fishing fleet.**

Recent rapprochement between Norway and Russia, the dominant coastal states in the region, led to conclusion of a delimitation treaty – the Murmansk Treaty of 2010. We are concerned that the two coastal states now allocate more and more fishing privileges to themselves, in a fashion discriminatory against EU fishing fleet.

Policy questions involved in the relations between the EU and Norway include interpretation and implementation of the following international treaties:

- a) Spitsbergen Treaty of 1920,
- b) UN Convention on the Law of the Sea (UNCLOS) of 1982, in the context of establishment by Norway of the Fisheries Protection Zone around Svalbard,
- c) Murmansk Treaty of 2010.

Our aim is to secure equal treatment of EU citizens in the process of implementation of the above international arrangements. The EU must find a way to secure its interests in that geographical area.

#### SPECIFIC ISSUES



There are a number of specific issues concerning Arctic fishing grounds.

## **1. Spitsbergen Treaty non-discrimination principle in the Svalbard FPZ**

### **A. Historical context**

The northern archipelago of Svalbard used to be a “no man's land”, where no national sovereignty was established and nationals of all countries had equal right to access. In the aftermath of World War I, the international community has decided that an equitable regime must be established in order to assure development and peaceful utilisation of the Svalbard archipelago. To achieve that, Norway has been given “full and absolute sovereignty” over the archipelago, subject to the terms and conditions of the Spitsbergen Treaty. All other parties abandoned their claims to sovereignty over Svalbard, at the same time preserving their fair share of rights to access the islands' natural resources. One of the conditions of the Treaty was that Norway does not discriminate against other parties to the Treaty with respect to hunting and fishing in Svalbard and its territorial waters.

### **B. Present issues**

In 1977 Norway has imposed a Fisheries Protection Zone around Svalbard, claiming that it has the right to do so, deriving from the sovereignty over the archipelago. The zone stretched beyond territorial waters of Svalbard and reached up to 200 nautical miles from its baselines. For a reason we do not understand Norway did not establish a regular Exclusive Economic Zone around these islands but limited itself to regulate fishing activities. On many occasions, the European Economic Community and European Union have protested the unilateral manner in which Norway administered fisheries in the FPZ, but these protests have given little result. The present status quo is that the European Commission has no official position on the issue of Svalbard FPZ but is at the same imposing Norwegian regulations on EU fishing vessels.

Norway has been claiming that Spitsbergen Treaty and especially its non-discrimination principle does not apply in the Fisheries Protection Zone. The FPZ is not part of territorial waters of Svalbard. Therefore Norway claims that the Spitsbergen Treaty – which expressly forbids any discrimination against other Parties – does not apply there, even though the FPZ is set up basing on the fact that it is the Treaty which gave sovereignty over Svalbard to Norway. At the same time Norway has always been stressing that nevertheless it does not discriminate against the EU fishing fleet.

## **2. Cases of discrimination against EU fishing fleet**

In our opinion, there are four distinct cases of discrimination against EU fishing fleet by Norway in the Svalbard FPZ. All of them include giving special rights to fishing vessels from Norway and Russia and allowing them a privileged status in the waters of the FPZ around Svalbard. In effect this amount to giving the most favored nation clause to Norway and Russia and we are convinced that it should be extended to all parties to the Spitsbergen Treaty, without discrimination.



### **a) Greenland halibut**

The fishery of Greenland halibut in the Svalbard has a long tradition. EU Member States conducted catches of this specie in 70s and 80s. In 1995, after years of fishery, a moratorium for directed fishery of Greenland halibut was introduced. Between 1995 and 2008, only scientific quotas were allocated, mainly for Norwegian and Russian vessels. In 2009, Russia and Norway by mutual agreement awarded exclusively to themselves the right for a directed fishery of Greenland halibut.

During the 38<sup>th</sup> session of the Joint Norwegian Fisheries Commission, an halibut quota of 15 000 tons a year was established in ICES Subareas I,II (even though in reality a material part of the quota is utilized in the Fisheries Protection Zone around Svalbard). The quota has been allocated as follows:

Norway	7650 tons – directed fishery
Russia	6750 tons – directed fishery
Others	600 tons – as bycatch only

The allocation to Norway and Russia constitutes 96% of the established quota for the directed fishery, whilst leaving just 4% to third countries as by-catch only, clearly demonstrates unequal treatment of the Parties to the Spitsbergen Treaty and unfounded appropriation of fishing rights by the coastal states.

*Regrettably it must be noted that despite interventions from stakeholders and Member States, the European Commission in its annual process of consultations with Norway has never effectively addressed this issue.*

Certain digression needs to be made here on a small technical point, but a crucial one.

ICES advice for Greenland halibut is made for the ICES Subareas I and II. This area covers nearly half of the North East Atlantic. It must be noted however that the fishery is in fact taking place exclusively along the continental shelf extending from Norwegian EEZ to waters of the Fisheries Protection Zone around Svalbard and Svalbard territorial waters. An important part of this fishery is conducted in the Svalbard area! This fact could lead to the conclusion that scientific assessment of this stock must redefine the area of distribution to which it refers in order to be founded in reality. It is clear that this assessment does not apply to the entirety of the ICES Subarea I and II.

The fact that the greater part of the Greenland halibut fishery in ICES Subareas I and II is taking part in Svalbard waters has been totally ignored by the EC, leading to the situation where Svalbard resources are harvested by two coastal states (NO, RU), in violation of the rights of other Parties to the Spitsbergen Treaty.

### **b) Haddock**

Norway claims that Northeast Arctic haddock is a fish stock shared between the two coastal states: Norway and Russia. Norway also claims that it is a reflection of traditional fishing patterns that no haddock quota is set aside for fishing by non-coastal States in the SFPZ, since catches of haddock in this zone have only occurred as sporadic by-catches.



It is the reality however, that haddock has always been distributed in the Svalbard area, and has been fished by EU Members. Since directed fishery was not and is not allowed for MSs (while Russian, Norwegian and Greenlandic vessels can conduct directed haddock fishing), it has been fished as a by-catch in other fisheries. In recent years, possibly due to both climatic changes, as well as improvement of the stock, the presence of haddock in Svalbard waters has increased dramatically, and despite the fact that cod is at its historical peak, the level of the haddock by-catch in the cod fishery is constantly increasing, as confirmed by catch information from vessels.

The Joint Norwegian-Russian Fisheries Commission, during its 39<sup>th</sup> session, set a 303,000 tons quota for haddock in ICES Subareas I and II for the year 2011. Of this quota, 8000 tons was allocated for scientific purposes, 8700 tons for third countries in the EEZ of Norway and 5800 tons in the EEZ of Russia. The rest has been divided between Norway and Russia. No quota has been set aside for Svalbard fishing countries to catch in Svalbard.

As of today, EU Member States fishing vessels have only been given the right to catch haddock as by-catch during directed fishery for cod but under a very restrictive limitation of maximum level 15% of haddock by-catch in every haul.

**Norway, Russia and Greenland have their own quotas for haddock, but the EU Member States do not. This means that the coastal states of Norway and Russia have extended their privileges from their respective EEZs to the Fisheries Protection Zone around Svalbard, creating a discriminatory environment for the EU fishing fleet.**

**The effect of this regulation, for vessels from the EU, is that, having noticed the by-catch of haddock at the level of 15% or above, in a haul, they are forced to move to a new area.** Otherwise they will risk violating the regulations and thus being arrested by the Norwegian Coast Guard.

To illustrate the scale of impact of this condition, please consider that the Polish vessel Polonus GDY-36 had to travel the distance of about 850 nm, that equals the distance between Warsaw and London, during its 2012 fishing activity in Svalbard, just to change fishing grounds each time haddock by-catch exceeded 19%. During the first fishing trip in 2013, this vessel has already travelled comparable distance to comply with the much stricter 15% by-catch limit.

Experiences of EU Member States' operators show that it is increasingly difficult to observe this unrealistically low level of haddock by-catch and that the Norwegian regulation effectively discriminates against the Community fishing fleet compared to its Norwegian and Russian counterparts by rendering cod catches economically hindering for the EU.

Once again, at the same time, Russian and Norwegian fishermen are free to target haddock in the Fisheries Protection Zone around Svalbard based on a flexibility clause which permits them to fish their haddock quota in the entirety of ICES Subareas I and II. In fact, however, a sizeable proportion of this quota should be treated as a separate Svalbard resource subject to the Spitsbergen Treaty (especially its non-discrimination clause). One should also mention that Russian and Norwegian privilege-based catches are being sold to EU market.



**c) Shrimp: closure of areas and “scientific” access to some.**

Historically the fishing ground around the small islands Hopen, located east of Svalbard (coordinates approx. 76°25N - 24°31E) and Kvitøy (coordinates approx. 08°08N - 32°33E), are one of the most important ones for the shrimp fleet in the Barents Sea / Svalbard area. For a number of years these areas have been partly closed to the shrimp fleets of EU Member States'. Hopen has been closed due to strict limitations concerning prepubertal redfish. These rules are unilaterally set by Norwegian authorities. The same authorities have granted dozens of licenses (scientific research license) to the Norwegian commercial fishing fleet.

The application procedure for the scientific research licenses is more complicated for the EU fleet than for the Norwegian one. The EU vessels shall remit their applications six months before the planned start-up date of the project, preliminary reports to be made, strict rules are concerning reporting etc.

The fishing area around the island Hopen has been closed to the EU fleet through technical barriers set by Norwegian authorities. The equal right to access to the resources has been violated.

**d) Redfish**

The situation of the Barents Sea redfish stock is in our view similar, but on a different stage of its development.

In the 1970s and 1980s, redfish has been an important species in the fishery of e.g. Poland, Spain and Germany. Then, in 1994, a moratorium on redfish was imposed.

Since 2004, the directed fishery of redfish has been conducted only in international waters of Norwegian Sea, in the so-called “Banana Hole”. In 2012 TAC in this area was set at 7 500 tons level.

In June 2012 ICES advised that the redfish stock in the whole of Area I and II, had substantially recovered and consequently proposed a material increase of TAC, up to 47.000 tons in 2013.

In response, the Joint Norwegian-Russian Fisheries Commission, during its 42<sup>nd</sup> session in year 2012 called for an increase in scientific research of redfish in the Barents Sea. The ban for directed fishery was maintained but both Parties announced that allocation of redfish quota may be possible in 2014.

As a result of this ICES recommendation, the TAC of redfish in the international waters of Norwegian Sea increased to 19 500 tons.

Since a sizeable part of the redfish stock have been fished historically in the Svalbard Fisheries Protection Zone, we are of the opinion that it is crucial that part of red fish quota for the ICES Subareas I and II be assigned as part of Svalbard resources, with equal access rights for all parties to the Svalbard Treaty.



#### e) Capelin

The Union has the right to fix for its own fleet TACs and quotas both inside and outside the Unions fishing zone. The Union thus has the competence to fix for Zone IIb (Svalbard) a TAC for capelin. Since 1983, although Danish fishermen with historical rights to the resource have continuously protested, every year the Union has continually fixed a TAC of 0 tons in the yearly TAC and Quota Regulation. The Union recognizes its competence, but continues to derive the EU fleet of valuable and legitimate fishing opportunities. Norway has continuously set unilateral quotas in the area, in many years amounting to more than 1 million tons.

*Here we turn your attention to this forthcoming issue of equal treatment of MSs by Norway in the area of Svalbard Fisheries Protection Zone*

### 3. Present legal status of five distinct areas of water in the Barents Sea

#### A. List of areas affected by the Murmansk Treaty

In 2010 Norway has agreed with Russia on a delimitation line in Barents Sea. This line goes through international waters of the so-called Loop Hole and through eastern part of the Fisheries Protection Zone around Svalbard. The treaty has been signed in Murmansk, hence it is referred to as the Murmansk Treaty

The entry into force of the Murmansk Treaty has created a new legal environment which is not clear to us. There are 5 zones of unclear legal status. They are numbered 1 through 5 on the attached map of the area.

Zone 1 is in the north-eastern part of the Svalbard FPZ, east of the Murmansk Line. It seems that now it is a part of EEZ of Russia.

Zone 2 is in the eastern part of the Svalbard, east of the Murmansk Line. It also seems to form a new part of Russia's EEZ, thanks to the Russian Victoria Island, halfway between Franz Josef Land and Kvitøya.

Zone 3 is south to Zone 2 but it seems that it is not in the Russian EEZ. It is rather a new part of the Loop Hole.

Zone 4 is the part of theretofore Loop Hole, east of the Murmansk Line. Our understanding is that together with Zone 3 it is now regarded as continental shelf of Russia, beyond the 200-mile EEZ.

Zone 5 is the part of theretofore Loop Hole, west of the Murmansk Line. Our understanding is that it is now regarded as continental shelf of Norway, beyond the 200-mile EEZ.

#### B. Eastern limits of the Svalbard Fisheries Protection Zone

It seems that Norway has transferred some of the FPZ waters to Russia under the Murmansk Treaty. It is questionable whether it had the right to do so. The FPZ has



been established as an area similar to the EEZ of Svalbard and it means that all parties to the Spitsbergen Treaty had the equal right to access to the resources of these areas.

Now Norway has transferred some of the territory to which EU Member States enjoyed access, to Russian EEZ. The transferred parts have been marked by numbers 1 and 2 at the attached map.

Our understanding is, that Norway had no right to limit rights of EU Member States in eastern part of the FPZ and transfer these to Russian Federation. That step is a clear sign of unilateralism and should be condemned by the EU as such. Effective measures should be considered to restore rights of EU citizens in areas where they now might have been limited, against existing international regulations.

### **C. Influence of Murmansk Treaty on rights and duties of Member States – Parties to the Spitsbergen Treaty of 1920**

It is for us unclear what influence Murmansk Treaty has on the rights and duties of Parties to the Spitsbergen Treaty of 1920 – 20 of which are EU Member States.

EU Member States have been allocated a quota of cod to be fished in the ICES Subarea I and II b. It was understood that the quota can be pursued in the whole area of the FPZ. Is it now the case that this cod quota can be pursued in Zones numbered 1 and 2? Can it also be caught in the Loop Hole (Zones 3, 4 and 5)?

A negative answer to the above questions would mean that EU Member States rights have been limited by the Murmansk Treaty and this should be pointed out to Norwegian and Russian administrations as a violation of our rights stemming from the Spitsbergen Treaty.

### **D. Universal rights under UNCLOS in the Loop Hole**

Our understanding is that the seabed and subsoil of the Loop Hole are now under jurisdiction of Norway and Russia. It is not clear however how this affects EU Members States' right to fish in that area.

According to the Article 77 paragraph 4 of the United Nations Convention on the Law of the Sea, the coastal states have sovereign rights over *“living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.”*

It is not clear for us how does this influence right to fish species which live at or near the bottom of the sea. While fishing directed for cod, Greenland halibut and prawn, the fishing tools might briefly, from time to time touch the bottom – even though it is never the intention of the fish master. Are such fisheries now forbidden or only possible with consent of the respective coastal state?

## **4. Recognition by the EU of the Fisheries Zone around Jan Mayen**



Another special maritime zone in the Arctic is the Fisheries Zone around Jan Mayen, imposed unilaterally by Norway.

It is not clear to us on what basis Norway claims its right to impose a Fishery Zone around Jan Mayen. We think that such act means that Norway itself is not sure whether it has the right to establish an Exclusive Economic Zone around the island. That is why Norwegian authorities invented a limited and otherwise unknown “Fishery Zone”.

What is the official position of the European Union on this topic? Are EU Member States fishing vessels allowed to conduct fishing in the Fishery Zone around Jan Mayen under EU authorizations only or do they need additional Norwegian licensing?

Precise answers to the above questions are material for European fishermen. They materially affect international rights of EU Member States and EU citizens. Please keep in mind that while this paper only deals with fishing rights, the discussion of legal status of the Arctic is important for other industries such as oil and gas extraction, mining, trade – and also involves issues of national security and counter-terrorism.

By this letter, we hope to invite the European Parliament to debate the issue of EU citizens rights in the Arctic maritime regions and the need to establish a framework of policies to be implemented by the EU to secure its rights in the abovementioned region.