

EU ENLARGEMENTS AND FISHERIES: A LEGAL ANALYSIS STEPS TOWARDS THE RE-NATIONALISATION OF EU MARITIME WATERS

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A b s t r a c t

The 2004 enlargement negotiations smoothly tackled the European Common Fisheries Policy. The reason is mainly to be found in the geographical transformation of ocean governance. The provisions regulating 'who should fish what and where', underwent a substantial change by means of temporal derogations. On the one hand the equal access principle eroded, as fishing in waters within 12 miles off the baselines - where most commercial fish stock are situated - became reserved towards the nationals of the coastal State. On the other hand the competence to adopt conservation measures has followed this geographical appropriation of fishing grounds, as the exclusive Community competence in this field is pushed out beyond the coastal waters. A return to the original provisions seems utopian, as evidenced again by the outcome of the 2004 enlargement negotiations. This paper analyses the process which led towards the re-nationalisation of EU maritime waters.

1. Introduction

The history of international conflict and co-operation over European fisheries has focused on the fundamental question about how marine space and its fisheries resources should be allocated among states. Despite its socio-economic importance, sea fishing has often led to political tensions, as complex fisheries disputes are easily reduced to the emotive issue of a national struggle against foreign invaders of 'our' sea space.(2)

States have long reserved the right to fish in the maritime waters under their sovereignty or jurisdiction for their own nationals and in particular for fishing vessels flying their flag. The principle of equal access (hereafter: the EA principle), which was firstly enounced in Article 2 of EEC Council Regulation 2141/70 proved to be one of the major bottlenecks during the subsequent enlargements negotiations and Common Fishery Policy reforms (hereafter: CFP), as it was at right angles to the general international trend since 1945 of granting coastal States exclusive or preferential fishing rights in wider and wider zones of their coasts.(3) On many of these occasions the issue of access to fisheries resources triggered off heated discussions and sometimes led to a total collapse of negotiations.

Bearing in mind this past commotion, one might wonder why the recent enlargement negotiations smoothly tackled the CFP. The fishing sector's contribution to the gross domestic product of the new Member States is in line with that of the old Member States. In nominal terms the fishing sector does not play an important role in the economy of the new Member States, as fisheries contribute less than 1 % to the Gross Domestic Product, and only in the case of Latvia this amounts to 1.5 %. However, its

economical, social and cultural importance should not be underestimated in coastal areas where alternative income resources are often scarce.(4)

Did the applicant Member States simply misunderstood the regime, as had been the case during previous enlargements?(5) Or did they simply obtain the derogations asked for? Or have the provisions on access to fisheries resources undergone such a substantial change during the past decades as to satisfy both coastal State and foreign 'habitual' fishermen?

These questions will be dealt with by looking at the Member State competences with respect to the management of fisheries resources and the changes the EA principle has undergone during previous enlargement negotiations and CFP Reforms. However, first some clarifications on the geographical scope of the CFP need to be made. Against this background, one can fully understand and appreciate the access regime of the CFP.

2. Geographical Scope

Since May 2004, the marine waters under the jurisdiction and the sovereignty of the new Member States have become an integral part of the Community pond.(6) Prior to the enlargement, the management and conservation of the main commercial species in the Baltic area fell under the responsibility of the International Baltic Sea Fisheries Commission. Now the conservation of Baltic marine living resources is being dealt with under the CFP and negotiations with the Russian Federation are to be pursued on a bilateral basis.(7)

Before the 2004 enlargements, the EU fishing waters in the Mediterranean remained limited to the territorial seas of the riparian Member States, which had not declared any exclusive fisheries zones (hereafter: EFZ) or exclusive economical zones (hereafter: EEZ).(8) The *ratione loci* of the Community fisheries competence in this region has been extended by the accession of Malta which had established a 25-mile EFZ in 1971.(9)

There are no provisions in the EC Treaty (hereafter: ECT) determining the geographical scope of the CFP.(10) The ECT itself addresses its geographical application by listing the Member States in Article 299 § 1. However, no reference is made to the territory of the Member States. Under International Treaty Law, in the absence of an express or implied intention to the contrary, a treaty is binding upon each party in respect of its entire territory. According to the International Law Commission, in the absence of any specific provision or indication in the treaty as to its territorial application, this territory embraces not only the land but also any appurtenant territorial waters and air space which constitute the territory of a State. Which are both from an international law perspective, extensions of State sovereignty.(11) Thus, the Treaty undoubtedly applies to the territorial sea, but what about Member States' maritime zones beyond it, such as the exclusive fishing zone, exclusive economic zone and continental shelf, which are not part of their territory? Does the Treaty extend to such zones, and even beyond to the high seas? The EC Treaty contains no direct answer to this question. But it must be noted that the Treaty does not contain any explicit provision excluding its application towards specific maritime zones in which the Member States have sovereign rights.

However, in relation to fisheries, there was never any explicit referral or strict confinement to the 'territory' of the Member States. Indeed, Community law has been taken to extend wider than the territorial sea.

A definition on the geographical scope of the CFP is to be found in article 1 § 1 of Regulation 2371/02 (hereafter: 2002 basic fisheries Regulation): "[t]he Common Fisheries Policy shall cover ... were such activities are practised on the territory of Member States or in Community waters...".(12) The Regulation provides a definition of these 'Community waters' as meaning the waters under the sovereignty or jurisdiction of the Member States with the exception of waters adjacent to the territories mentioned in Annex II to the Treaty.(13) This definition does not use the customary international law terminology for describing and defining Member States' maritime zones, but takes each of its component parts: sovereignty and jurisdiction, which are not subject to any definition in the Regulation. The geographical scope of EC fisheries competence thus corresponds to the maritime zones under the sovereignty or under the jurisdiction of Member States according to the International Law of the Sea.

Prior to the enlargement, the ten coastal States among the candidate countries were in possession of full sovereignty regarding their territorial waters, which are limited to a maximum extent of 12 miles.(14)

The waters under jurisdiction refer to the EFZs or EEZs, as determined by Member States national legislation. By virtue of the International Law of the Sea, the preferential exploitation rights conferred upon the coastal State (15) in their EEZ go hand in hand with the obligation to conserve the resources

within their jurisdictional zones.(16) The breadth of the EEZ may not extend beyond 200 miles from the baselines.(17)

Coastal States also enjoy sovereign rights over their continental shelf for the purpose of exploring it and exploiting its natural resources.(18) The continental shelf may extend beyond the 200 miles.(19) These sovereign rights do not encompass the superjacent waters of the CS (20), but refer to the natural resources described as sedentary species, which are either immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.(21) Crustaceans and molluscs are listed among the products subject to the provisions of the CFP.(22)

This was indirectly confirmed by the ECJ in case 61/77 in which the Irish government raised an objection concerning the geographical area of application of EEC Regulation N° 101/76.(23) It was stated that article 2(3) of this Regulation, which reads: “[t]he maritime waters referred to in this Article shall be those which are so described by the laws in force in each Member State”, only referred to the maritime waters as they were defined at the time of entry into force of the Regulation, prior to the extension of fishing zones as from 1 January 1977 onwards. Such an interpretation would restrict the application of the CFP to a small proportion of the seas under jurisdiction of the Member States, i.e. the waters within 12 miles. This approach was countered by the claim that the underlying conception when adopting the disputed article was that any alteration which a Member State makes in the extent of its jurisdiction also represents an alteration of the limits of the Common market. The Court confirmed that Regulations apply to the same geographical area as the Treaty itself. (*supra*) And reference to the ‘laws in force’ must be interpreted as referring to the laws applicable from time to time during the period of validity of the regulation concerned, which established a common system for fishing throughout the whole of the maritime waters belonging to the Member States. Consequently, any extension of the maritime zones in question automatically means precisely the same extension of the area to which the regulation applies. (24)

3. Member State competence in their waters under sovereignty

Since 1979 the competence for the conservation of fisheries resources has been transferred from Member State level to the European Economic Community.(25) As for the waters under sovereignty (territorial sea), the competence to adopt fisheries legislation for waters under jurisdiction (EEZ-EFZ) lays exclusively within the Community.(26) However, this exclusive character does not mean that Member States are deprived of all their law-making capacity with respect to fisheries as Member States may obtain competence through delegation by treaties or secondary legislation. As will be demonstrated below the Member States may adopt measures within their waters up to 12 nautical miles and in the case of an emergency situation, this is extended towards the waters under jurisdiction (*infra*).

3.1. The competence to adopt measures

A Member State may take non-discriminatory measures for the conservation and management of fisheries resources and to minimise the effect of fishing on the conservation of marine eco-systems within 12 nautical miles of its baselines provided that the Community has not adopted measures addressing conservation and management specifically for this area. These measures have to be compatible with the CFP objectives and be no less stringent than existing community legislation. If such measures are liable to affect the vessels of another Member State, the Commission, the Member State and the Regional Advisory Councils concerned have to be consulted.(27) There is no provision in the regulation that refers to the temporal character of this competence. However, by making this competence subject to an anticipated legislative action at EU level, the Community has safeguarded or stressed its delegated character.

Prior to the 2002 Reform, a Member State could only adopt measures strictly aimed at local stocks, which were of interest only to the local fishermen and did not affect the fishermen of other Member States.(28) Another major innovation is to be found in the explicit referral to ‘fisheries resources within 12 nautical miles’, whereas under the 1992 Regulation there was no such geographical delimitation.

Prior to the 2004 enlargement, the Community had not yet adopted any measures addressing fisheries conservation and management specifically for the waters situated within 12 nautical miles.(29) During the enlargement negotiations, Malta requested the maintenance of its 25 mile exclusive fishery zone, meaning that access to these waters would be exclusively reserved towards its own nationals. Due to its discriminatory nature, Malta had to withdraw this request but did obtain a specific management

regime within 25 nautical miles off its baselines, as laid down in Regulation 813/2004.(30) Fishing within the 25-mile management zone around Malta is restricted to small scale vessels, meaning to vessels less than 12 metres, subject to some exceptions. Since this provision is intended not to discriminate between Maltese and other EU fishermen, this implies that Maltese vessels that are larger than 12 metres will also not be able to target fishery resources in that zone. This affects something like fifty vessels or around 6 % of the Maltese fleet.

The Regulation also provides that fishing for 'Dolphin fish' by means of fish aggregating devices will be allowed under a limited permit system (maximum of 130 vessels) open to all Community Fishermen on a non-discriminatory basis, but only starting from outside 12 miles for non-Maltese Fishermen.(31) It should be noted that it is not Malta which takes a discriminatory measure. The Community addresses itself specifically to the waters situated within 12 nautical miles, which could be seen as a transferral of competence from MS to the Community. It is unclear why Malta did not take this measure under national law. As will be demonstrated below a Member State may exclude foreign fishermen from its territorial waters.

The Member States' regulatory competence within its 12 mile limit, is curtailed considerably when the envisaged measures do affect other Member States' vessels, which is of particular importance for safeguarding the rights of Member States enjoying historical rights within the 12 miles zone of another Member State. In such case the Member States 'emergency procedure' has to be followed which means that the Commission has to confirm, cancel or amend the measure. The council, acting by qualified majority, may take a different decision. The right to propose measures remains at Member State level.

Member States may take emergency measures if there is evidence of a serious and unforeseen threat to the conservation of living aquatic resources, or to the marine ecosystem resulting from fishing in waters falling under the sovereignty or jurisdiction of a Member State. Notwithstanding the fact that the duration of these measures may not exceed three months and the Commission's consent, the extension of such competence towards waters under jurisdiction is a major step in the process of a re-nationalisation of marine waters.(32)

It should also be mentioned that the Member States may prescribe measures applicable solely to fishing vessels flying their flag and applicable in Community waters. The measures may not be less stringent than existing community legislation.(33)

3.2. The competence to restrict access

The EA principle is to be found in Article 17(1) of the 2002 Basic Regulation: "[c]ommunity fishing vessels shall have equal access to waters and resources in all Community waters other than those referred to in paragraph 2, subject to the measures adopted under Chapter II." This means that the vessels of a Member State can fish anywhere for the quotas allocated to that Member State, regardless of which State's fishing zone that area happens to occupy.

The measures adopted under chapter II refer to a whole range of technical measures aimed *inter alia* at the limitation of fishing mortality and the environmental impact of fishing activities. They include recovery plans, management plans, Commission – and Member States emergency plans.(34)

Thus, within EU waters access can not be restricted on the basis of nationality, which means e.g. that as long as their quota limit is not reached, an unlimited number of French vessels can fish in the Baltic Sea. The only means to keep specific vessels out is to require that they comply with certain technical requirements.

However, there is a temporal derogation from the EA principle to be found in Article 17 § 2 of the 2002 basic Regulation:

"[i]n waters up to 12 nautical miles from the baselines under their sovereignty or jurisdiction, Member States shall be authorised from 1 January 2003 to 31 December 2012 to restrict fishing to fishing vessels that traditionally fish in those waters from ports on the adjacent coast, without prejudice to the arrangements for Community fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member States and the arrangements contained in Annex I, fixing for each Member State the geographical zones within the coastal bands of other Member States where fishing activities are pursued and the species concerned."

Practically, this means that Member States may restrict access to the waters up to 12 nautical miles to their own nationals. However, it should be noted that the drafters carefully described the beneficiaries as vessels that traditionally fish in those waters from ports on the adjacent coast. In this way, preferential rights were accorded to the often economically disadvantaged coastal regions. By keeping silent on any nationality requirement, the discriminatory nature of this derogation has been concealed.

This Member States exclusiveness is not absolute, as it is subjected to existing neighbourhood relations and the arrangements contained in Annex I of the 2002 Regulation.*(infra)*

The derogatory period terminates on 31 December 2012, when the Council will take a decision on the provisions to follow. Most probably the derogations will be extended, as has been the case during previous CFP reforms in order to conserve the *status quo*. However, here the question arises whether a permanent derogation regime can be sustained within the framework of the ECT, but may instead require a change in the EC Treaty. Article 308 ECT prohibits such a change without an actual treaty amendment.

A recurrence to the original access regime free of derogations seems utopian as evidenced by the transformations which the access regime underwent since its adoption in 1970 and more recently again by the 2004 enlargements. The way in which these events eroded the principle and contributed to a re-nationalisation of the marine waters will be demonstrated below.

4. From Equal access to marine nationalism

4.1. First Basic Regulation

The EA principle dates back to the first basic fisheries Regulation in which fishing rights were formulated and applied following the fundamental principles of the Treaty of Rome concerning the free movement of people, products, services and capital. Just as the Treaty of Rome insisted on the removal of national barriers to fish trade, so it was logical, as argued by the Commission, to eliminate similar discriminations preventing the free movement of fishing boats (means of production).(35)

The EA principle in the first basic fisheries Regulation reads as follows:

“[r]ules applied by each Member State in respect of fishing in the maritime waters coming under its sovereignty or within its jurisdiction shall not lead to differences of treatment of other Member States.

Member States shall ensure in particular equal conditions of access to and the use of the fishing grounds situated in the waters referred to in the preceding subparagraph for all fishing vessels flying the flag of a Member State and registered in Community territory.”(36)

The only exception to this rule consisted of a temporary derogation (until 1st February 1976), which allowed certain fishing practices in certain areas within a three mile belt to be restricted to the local population established along the coast of these zones, if this population was primarily dependent on fishing.(37) Clearly, this competence had a temporary character allowing the coastal fishermen to adapt themselves to the new situation. Note that the wording for describing the beneficiaries of such rights is ‘local’ fishermen and not ‘nationals’ of the coastal state.

The waters under jurisdiction referred to, were to be found in the 1964 London Fisheries Convention and meant the waters laying between the outward limit of the territorial sea and 12 miles, in which fishing was to be exercised only by the coastal state, subject to the habitual fishing rights of the other Contracting Parties.(38) In this way the geographical application of the EA principle was confined up to an external limit of twelve miles, but the absence of a uniform definition of the width of the territorial sea in the 1964 Convention and of the waters under jurisdiction in the 1970 regulation, meant that the EA principle had a heterogeneous geographical application.(39) On the side of the EEC Member states, only France had ratified the Convention at that time and the external limit of its TS was set at twelve mile. Italy had a 6 mile TS, while Belgium, the Netherlands and Germany had a territorial sea of three miles. On the side of the non-EEC Members party to the Convention, the United Kingdom, Denmark and Ireland had enacted a 12 mile EFZ.(40)

4.2. First Enlargement: 3-6 mile

The First Act of Accession is important as it laid down an access regime which departed considerable from the beach doctrine.(41)

The prospect of Norway, Denmark, the UK and Ireland acceding to the European Economic Community had greatly facilitated the establishment of the EA principle as it found its origins less in European ideals, than in the prospect of greater fishing opportunities in the waters of the new applicants who possessed enormous offshore resources at a moment where the concept of EEZs emerged. In fact, negotiations had started on the very day agreement among the ‘Six’ was reached on the access provisions of the CFP.

The problems of fishing had to be solved in accordance with the two principles that governed the negotiations. First, the access rules were now part of the “*acquis communautaire*”, the four candidates

had to accept the “Community Status Quo”. Second, changes to the existing rules due to difficulties of adaptation had to be solved by means of transitional measures. Only in exceptional cases, such as derogation from the principle of freedom of access to national maritime waters, the transitional measures could last more than 5 years and could contain a modification of the existing rules.

The candidate States perceived the EA provision as a threat to their interests and thus opposed the principle. It was unacceptable to them to abandon the provisions agreed upon in the 1964 Convention and to return to a situation which was even more severe than the Convention for the Regulation of the Policing of the North Sea Fisheries of 6 May 1882.(42)

The achieved compromise found its expression in Articles 100 and 101 of the 1972 Act of Accession. A 10-year derogation was provided for in article 100 which stated that: “[m]ember States were allowed to restrict fishing in waters under their sovereignty or jurisdiction, situated within a limit of 6 nautical miles, calculated from the baselines of the coastal Member State, to vessels which fish traditionally in those waters and which operate from ports in that geographical coastal area.”

However the existing special fishing rights (historical rights) between the existing and new Member States had to be respected during this derogatory period. In the case of an extension of the fishing limits up to 12 nautical miles by a Member State, the fishing activities had to be pursued without retrograde change to the situation before the accession.

The demands of the new applicants for 12-mile special exception zones found its expression in article 101 of the Act of Accession, which extended the limit in article 100 to 12 nautical miles in certain coastal areas of France, Denmark, The United Kingdom and Ireland.(43) Within the 6-12 mile band the historical fishing rights were maintained. Again these measures were supposed to give the local population enough time to adapt to the new conditions of an open market. This derogation on the principle of equality of access was thus seen as temporary.

4.3. 1983 Reform: the 12 mile coastal band

The geographical scope of the waters under Member State jurisdiction was extended following the 1976 the Hague Resolution calling for a concerted extension of the Member States fishing zones up to 200 miles as from 1st January 1977. This radical change in political geography of the marine resources required a fundamental reform of the CFP. Regulation N° 170/83 represented a carefully achieved balance between the system of exclusive access to coastal waters for national fishermen and the protection of the habitual fishing activities by fishermen from other Member States.(44) The continental Member States again favoured an access system free of national limitations. Britain and Ireland strongly opposed this and insisted that their fishermen should be given an adequate protection through the establishment of national fishing zones.

As at the moment of the first accession, the notion of coastal bands stood central in the 1983 compromise. The Council had smoothened the path by its declaration of 30 May 1980 in which it was acknowledged that the fisheries policy had to achieve a fair distribution of catches by taking particular account of traditional fishing activities and the particular needs of the regions whose local population is particularly dependent on fishing and its affiliated industries, and of the potential loss of catches in third countries' waters. The disposition to be adopted needed to be in conformity with the Act of Accession and Annex VII of the 1976 Resolution.(45)

As from this moment the perpetuation of the coastal bands became clear to the negotiators and henceforward efforts were concentrated on the exercise of historical rights within these coastal bands. The EA principle was maintained, but the derogations provided for in the 1972 Act of Accession were extended both in spatial and temporal terms in order to enable the inshore fishing sector to cope with the new fishing conditions resulting from the institution of 200 mile fishing zones.(46) First, the 6 n.m. zone in which fishing could be restricted to vessels which traditionally fish in those waters and which operate from ports in that geographical coastal area was extended up to 12 n.m.(47)

The rights of other Member States' fishermen within this 12 mile band were expressly dealt with by Community law. Article 6 § 2 stipulated that the historical fishing activities in this extended coastal band were to be pursued in accordance with the arrangements found in the Regulation's Annex I, which listed for each Member State the geographical zones within the coastal bands of other Member States, where the former was allowed to pursue fishing activities and the species concerned. Most of these historical rights were to be found in UK coastal waters to the benefit of France, Ireland, the German Federal Republic and Belgium. The waters of the other Member States were less affected by these fishing rights. However, this strict fixing of fishing opportunities was tempered by the provision that Member States could pursue the activities agreed upon under existing neighbourhood relations.(48)

Although the derogatory character was not expressly mentioned in article 6, it was clear from the wording of the Regulation's preamble that the establishment of reserved 12 miles zones did not have a

definitive character. The continuation of this regime was meant to be maintained in an initial stage until 31st December 1992. After the expiry of this period the Council had to decide on possible adjustments to the coastal band regime. But only after another 10 years (31 December 2002), a decision had to be taken on the provisions which 'could' follow the coastal band regime. Thus, if undecided in 1992, the 12 mile coastal band regime was guaranteed until 31 December 2002. (49)

4.4. Subsequent accessions and CFP reforms

Although Fisheries were not a contentious matter during the Greek entry negotiations, the 1979 Greek Act of Accession also provided for a derogation of the equal access principle, modelled on that contained in the earlier 1972 Act of Accession.(50) Under Article 110 Italy and Greece were authorised until the end of 1985 to restrict, as between each other, fishing in certain areas to local vessels. The areas concerned being a six-mile zone off all Greek coasts and a six-mile zone off all Italian coasts, extended to 12 miles in certain areas.(51) Like the 1972 Act of Accession, the Greek Act made provision for fishing rights of one party in the waters of the other party subject to the derogations to be preserved. Contrary to the 1972 Act of Accession, these fishing rights did not have to exist at the moment of Accession but were considered to be those as existing in 1 January 1981. Here the question arises how these anticipated fishing rights might be qualified. The special fishing rights referred to in Article 110 are not subject to any definition. Clearly, they can not be qualified as historical rights as found in the arrangements referred to in Annex I of the later 1983 basic fisheries Regulation. These Annex I arrangements refer to pre-existing fishing activities prior to the adoption of the first basic Regulation or Accession to the Community. Another option is to qualify them as activities pursued under existing neighbourhood relations between Member States. Such existing neighbourhood relations have never been defined in secondary fisheries legislation. According to Churchill, in practise there do not appear to have been any such rights between Greece and Italy.(52) This transitional regime did not end on 31 December 1985 as it was absorbed into the derogatory provisions provided by the 1983 Regulation (*supra*).

As demonstrated earlier, the eventual outcome of the 1970 fisheries Regulations has been greatly influenced by the prospect of the 1972 enlargement. Similarly, the idea of a Spanish *Armada* invading the western waters influenced the access provisions during the 1983 reform. This time in the opposite direction, as it facilitated a further shift-away from the EA-principle. Contrary to the previous enlargements, when the defence of historical rights stood central, the main concern now was how to exclude the new Member States from the Community waters. During the accession negotiations Spain hoped for a larger share in catches in community waters by fencing with the non-discrimination principles of the CFP, which led to national reactions from the existing Member States who were determined to keep the Spanish fleet out of their waters. It would be an extensive task to comment upon the arrangements which followed the Spanish accession and which were subject to review in 1996. The most important outcome is that they were not able to obtain access to the existing Member States' territorial waters under the 1986 Act of Accession.(50) In 1996 only a very limited access was granted within the French coastal waters. French vessels were granted access to the 6-12 miles zone of the Atlantic and Mediterranean Spanish/French frontier region. Portugal did not obtain such rights. (53) After the third enlargement the CFP entered a period of consolidation.

Prior to this adjustment it was the mid-term review in 1992 which offered an opportunity to analyse the access provisions of the CFP. It was decided that Member States should be authorised to maintain the derogations until 31 December 2002 as they existed at the time Regulation N° 170/83 was adopted and, for the States that acceded to the Community after this date, at the time of their accession. The nature of these measures was expressly mentioned as being a derogation from Regulation N° 101/76, establishing the EA principle. The same article also provided that the Member States were authorised to generalize up to 12 nautical miles for all the waters under their sovereignty or jurisdiction the limit of six miles laid down in the 1972 Act of Accession. The rules of access for fishing vessels of other Member States enjoying traditional rights within this 12 mile was equally renewed until 31 December 2002.(54)

With the fourth accession to the Community completed on 1 January 1995, the CFP faced a new challenge which diminished significantly with the non-accession of Norway to the Community. The Norwegian public rejected EU Membership for a second time in a referendum. There were transitional arrangements for Swedish and Finnish vessels before they were absorbed into the general scheme of the CFP. On acceding, Finland and Sweden were required to accept the '*acquis communautaire*' as it applies to the CFP. Access for their respective fleets to Community resources had to be in accordance with the principle of relative stability. Sweden was granted access to the Baltic coastal waters of Finland and Denmark. Denmark was allowed to fish in the Swedish waters of Skagerrak and Kattegat and was able to do so together with Finland in the Swedish Baltic coastal waters. In order to be comprehensive, it

should also be mentioned that according to Annex I of the 2002 fisheries Regulation, Denmark has access to the German Baltic coast.

4.5. The 2004 negotiation Results

The fisheries issues were dealt with under chapter 8 of the enlargement negotiations and provisionally concluded in December 2002. Only Latvia and Malta and Poland were able to obtain derogations from the access provisions.(55)

The access issues with respect to Malta were already commented upon above. Poland had to withdraw its request for an exclusive 200 nautical miles zone for obvious reasons.(56) Latvia requested a derogatory regime in the entire Gulf of Riga. The area not covered by the 12-mile coastal zone regime in the Gulf of Riga is an enclave constituting 20% of the total area of the Gulf and surrounded by territorial waters of Latvia and Estonia. Fishing in the Latvian territorial and economic zone waters in this area has been carried out only by Latvian fishermen, and fishing in the Estonian waters has been carried out only by Estonian Fishermen. Latvia requested that fishing in the exclusive economic zones of the Gulf of Riga should be granted only for the countries, which have historically and traditionally fished in this fishing area. According to Latvia, the rationale for granting exclusive access to resources within the territorial waters needed to be extended towards some parts of the EEZs.

The EU decided to include Regulation 88/98 laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound in the list of acts requiring adaptation by reason of Accession.(57) These adaptations were to be drawn up in conformity with the guidelines found in Annex 3 of the Accession Treaty, which stipulated *inter alia* that the overall fishing capacity will not exceed the fishing capacity observed in the years 2000-2001 in the Gulf of Riga. Furthermore, the technical measures for conservation will be non-discriminatory and will be applied in the entire Gulf of Riga.

Contrary to the measures that followed the Maltese requests (*supra*), there has been no amendment of Regulation 88/98. In stead more detailed provisions on access issues in the Baltic waters were to be found in the 2004 TAC Regulation, which authorises Community vessels to make catches in waters falling within the fisheries jurisdiction of Estonia, Latvia, Lithuania, and Poland, thus beyond the territorial waters.(58) Fishing vessels flying the flag of Estonia, Latvia and Lithuania were limited to those parts of the 200-nautical-mile zone lying seawards of 12 nautical miles from the baselines of Member States in the Baltic Sea south of 59°30'N.(59) Poland and the Russian Federation were limited to those parts of the Swedish part of the 200-nautical-mile zone lying seawards of 12 nautical miles from the baselines of Sweden in the Baltic Sea. This access regime is in line with the provisions of the bilateral agreements which governed the fisheries relations between the Baltic States and the EU.(60) The 2005 TAC Regulation does not provide such detailed provisions as the Baltic Fisheries regime is now fully absorbed into the CFP Framework. It does lay down the specific fisheries regime in the Gulf of Riga consisting of a special fishing permit regime. The total engine power of the vessels included on the list may not exceed that observed for each Member State in the years 2000-2001.

These guidelines do not provide any provisions on the access rights other MS might enjoy within their 12 miles zone. By virtue of Article 17 § 2 of Regulation 2371/02, access to the 12 miles zone might be reserved to fishing vessels that traditionally fish in those waters from ports on the adjacent coasts. This article also refers to the arrangements for Community fishing vessels flying the flag of other Member States under existing neighbourhood relations between Member States and the arrangements contained in Annex I. These existing neighbourhood relations do not need to be specified under secondary fisheries law and refer e.g. to the Benelux arrangement which allows Dutch vessels unrestricted access to the Belgian 12 mile zone. However it is unclear in what way such neighbourhood relations differentiate from the arrangements found in Annex I. This annex I fixes for each Member State the geographical zones within the coastal bands of other Member States where fishing activities are pursued and the species concerned. Following the accession there has not been an amendment of Annex I of Council Regulation 2371/2002. Thus there is no basis for assuming that the new Member States enjoy historical rights in each others waters unless they qualify as 'existing neighbourhood relations'.

5. Conclusion

The EA principle was never fully applied, since at the moment of its conception, derogations were considered as necessary in order to give local fishermen time to adapt to the new situation. Faced with

resource pressures emanating from changes in the international legal framework, its future development was marked both by geographical and temporal extensions.

Prior to 1977, the geographical scope of the common fisheries policy was limited to a maximum extent of 12 miles and since the accession of the UK and Ireland free access became further limited by the provisions of the 1972 Act of Accession. Geographically, it had its fullest application between 1977, when the Council called for a concerted proclamation by the Member States of 200 miles EEZs, and 1983 when the Community system of total allowable catches was introduced. As from this date equal access is no longer synonym to free access. Immediately after their accession Portugal and Spain unsuccessfully challenged the validity of the derogations to the principle and the Norwegian dissatisfaction mainly concerning the access provisions, which they perceived as not being restrictive enough, eventually led to a negative referendum in 1994. As demonstrated above, the latest enlargements have contributed to a re-nationalisation of marine waters due to the absence of any definition on historical rights and the confinement of other State's vessels to waters beyond 12 miles. This shift-away from the EA principle becomes even more obvious when the provisions concerning the Member States' competence to adopt management and conservation measures are looked at.

The situation as it exists today confirms in retrospect the views of the first candidate Member States in 1972 which were according to Churchill nothing less than a full retention of jurisdiction within the 12 miles zone and the competence to take conservation measures.⁽⁶⁰⁾

However it should be remembered that any derogation from it, still is of a temporary nature, subject to review in 2012. In the mean time it seems as if the path is paved towards its abolition within territorial waters and confined to the waters under jurisdiction. The fragile equilibrium between coastal and foreign fishermen has shifted to the benefit of the former. Claims voiced within some Member State such as 'We want our fishes back' and the increasing resources scarcities hint at a tumultuous understanding of and future development of the access provisions.



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2. Mark Wise, *The Common Fisheries Policy of the European Community* 1 (1984).
3. Council Regulation (EEC) N° 2141/70 of 20 October 1970 on the establishment of a common structural policy for the fishing industry, Official Journal L.236 of 27 October 1970, at 5; R.R. Churchill, *EEC Fisheries Law* 123 (1987).
4. Cyprus: 0.3%; Estonia: 0.3%; Latvia: 1.5%; Lithuania: 0.1%; Malta: 0.1%; Poland: 1%; Slovenia: 0.02%. European Commission, Fact sheets on the fisheries sector of the new Member States, Available at http://www.europa.eu.int/comm/fisheries/enlargement/index_en.htm, as visited on 15 September 2004; European Parliament, Briefing N° 29 European Union Enlargement and Fisheries, Doc. PE 167.799.
5. Immediately after agreement had been reached on the fisheries articles of the 1972 Act of Accession, the UK's chief negotiator stated in the House of Commons that the United Kingdom would retain full jurisdiction in its then 12 mile fishery zone, including the power to enact conservation regulations. In 1994, the Norwegian negotiators went home with the same impression. See Churchill, *supra* note 3, 89.
6. Three new Member States are landlocked: Czech Republic, Slovakia and Hungary. However, they all have an aquaculture sector.
7. The International Baltic Sea Fishery Commission was established pursuant to Article 5 of the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts (the Gdansk Convention). Convention on fishing and conservation of the living resources in the Baltic Sea and the Belts, 13 September 1973, multilateral, 12 International Law Materials 1292-1297 (1973); Council Decision 2004/890/EC of 20 December 2004 on the withdrawal by the European Community from the Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and Belts, Official Journal L.375 of 23 December 2004, at 27; Birger Rasmussen, *Management Issues for Baltic Sea Fisheries: the Case of Cod and Salmon*, in Northern Waters: Management Issues and Practise 145 (David Symes ed., 1998).
8. Contrary to other semi-enclosed seas like the Baltic, the majority of the surface area of the Mediterranean falls under the category of international waters. This means that the management of fisheries in the Mediterranean is a unique mixture of 'internal' and 'external' resource management. The CFP conservation policy is based on three main instruments: catch limitations in the form of TACs and quotas, technical measures such as gear restrictions, and effort limitations, e.g. the Gulf of Riga. Of these three instruments only the technical measures are applied in the Mediterranean through Council Regulation 1626/94.

- Council Regulation (EC) N° 1626/94 of 27 June 1994 laying down certain technical measures for the conservation of fishery resources in the Mediterranean, Official Journal L.171 of 6 June 1994, at 1-6; Ernesto Penas Lado, *A Common Fisheries Policy for the Mediterranean*, in *Europe's Southern Waters: Management Issues and Practice* 170-173 (David Symes ed., 1999).
9. The European Court of Justice has pointed out that any extension of their maritime zones by the Member States would mean precisely the same extension of the area to which EC fisheries law applies. See Case 61/77, *Commission v. Ireland*, 1978 European Court Reports 417, para. 50.
In the *Kramer* Case the ECJ held that the rule-making authority of the Community *ratione materiae* also extended – insofar a member States have similar authority under public international law – to the high seas. The exercise of Community competence outside the maritime areas of the Member States must be founded on a link of jurisdiction recognized by public international law. See Joined cases 3,4 & 6/76, *Officier van Justitie v. Kramer*, 1976 European Court Reports 1279, para. 30-33.
 10. Treaty establishing the European Community, Official Journal C.325 of 24 December 2002, at 35.
 11. Article 25 of the Vienna Convention on the Law of Treaties, 25 May 1969, 1155 United Nations Treaty Series 351 (1969); 63 American Journal of International Law 878 (1969); United Nations Convention on the Law of the Sea, 10 December 1982, 1833 United Nations Treaty Series 396, Article 2 (hereafter: UNLOSC); 2 Arthur Watts, *The International Law Commission 1949-1998: The Treaties* 672-673 (1999).
 12. Council Regulation N° 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, Official Journal L.358 of 21 December 2002, at 59.
 13. *Ibid.* Article 3(a).
 14. The international customary law principle of coastal State sovereignty over its territorial sea is to be found in Article 2 § 1 of the 1982 United Nations Convention on the Law of the Sea: “[t]he sovereignty of a coastal State extends, beyond its land territory and internal waters, ..., to an adjacent belt of sea, described as the territorial sea.”
Article 3 UNLOSC reads: “[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.”
 15. Article 56 UNLOSC provides *inter alia* that: “[i]n the exclusive economic zone, the coastal State has (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water currents and winds...”
 16. UNLOSC, *supra* note 11, Articles 61-68.
 17. UNLOSC, *supra* note 11, Article 57.
 18. UNLOSC, *supra* note 11, Article 77 § 1.
 19. UNLOSC, *supra* note 11, Article 77 § 5.
 20. UNLOSC, *supra* note 11, Article 78 § 1.
 21. UNLOSC, *supra* note 11, Article 77 § 4.
 22. EC Treaty, *supra* note 10, Annex I.
 23. Case 61/77, *Commission v. Ireland*, 1978 European Court Reports 417.
 24. *Ibid.* para. 46-50.
 25. Article 102 of the 1972 Act of Accession provided that: “[f]rom the sixth year after accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view of ensuring the protection of the fishing grounds and the conservation of biological resources of the sea.”
The exclusive EU decision making competence was commented upon by the Court in the *Kramer* case as follows: “[i]t should be stated first that this authority which the MS have is only of a transitional nature ... it follows from the foregoing considerations that this authority will come to an end ‘from the sixth year after accession at the latest’ since the Council must by then have adopted ... measures for the conservation of resources of the sea”.
See joined cases 3,4 and 6/76, *Cornelis Kramer and others*, 1976 European Court Reports 1279, paras. 40 and 41.
Once this transition period has ended, these remaining rights cannot be appealed upon as confirmed by the ECJ: “[i]t follows from ... Articles 100 and 103 of the 1972 Act of Accession that the measures derogation from a fundamental principle of community law, namely non-discrimination, were limited to the transitional period and that the power to bring into force any provisions thereafter was entrusted to the Community authorities... It cannot be concluded from the fact that the Council failed to adopt such provisions within the period provided for in Article 103 that the Member States had the power to act in the place of the Council, in particular by extending the derogation beyond the prescribed time-limits.”
See Case 63/83 *Regina v. Kirk*, 1984 European Court Reports 2689, paras. 14-15.
 26. This exclusive legislative competence also entails a transfer of competence in matters only having an indirect effect on fisheries such as the protection of the marine environment by means of marine protected areas due to the restricted scope of the EU Habitats Directive and the exclusion of fisheries from the OSPAR regulatory framework.
Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Official Journal L.206, 22 July 1992, at 7-50; Convention for the Protection of the Marine Environment of the North-East Atlantic, 22 September 22 1992, reprinted in 32 International Legal Materials 1069 (1993).
The Community competence extends to the high sea. Vessel registration and flag state control under the 1982 United Nations Law of the Sea Convention are the only areas of fishing vessel regulations that are explicitly exempted from EU exclusive autonomy.
 27. 2002 basic fisheries Regulation, *supra* note 11, Article 9 § 1.
 28. Council Regulation (EEC) N° 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, Official Journal L.389 of 31 December 1992, Article 10.

29. It should be noted that all the management and conservation measures, e.g. the system of TACs and the technical measures, apply within the 12 mile limit. The Community has not adopted any measures dealing specifically with waters under the 'jurisdiction' (EEZ-EFZ) either.
30. Council Regulation (EC) N° 813/2004 of 26 April 2004 amending Regulation (EC) N° 1626/94 as regards certain conservation measures relating to waters around Malta, Official Journal L.150 of 30 April 2004, at 1.
31. *Ibid.* Article 8 (a-b).
See also COM (2003) 589 final of 9 October 2003, Proposal for a Council Regulation concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea and amending Regulations (EC) N° 2847/93 and 973/2001; Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, Official Journal L. 236 of 23 September 2003, Annex III, at 794.
32. Council Regulation 2371/02, *supra* note 10, Article 8.
33. Council Regulation 2371/02, *supra* note 10, Article 10.
34. Council Regulation 2371/02, *supra* note 10, Articles 4-10.
35. COM (66) 250 final, Report on the Situation in the Fisheries Sector of EEC Member States and the Basic Principles for a Common Policy, Official Journal of 22 June 1966, at 862.
36. Council Regulation (EEC) N° 2141/70, *supra* note 3, Article 2 § 1.
37. *Ibid.* Article 4.
38. Fisheries Convention, multilateral, 9 march 1964, 581 United Nations Treaty Series 56 (1966).
The 1964 London Fisheries Convention established a six + six system. The coastal State's exclusive right to fish and exclusive jurisdiction in fisheries matters was extended from 3 n.m to 6 n.m. In order to adapt themselves to this exclusion, fishermen of the other Contracting Parties, who had habitually fished in this belt could continue to do so during a transitional period to be determined by the Contracting Parties. Within the belt between six and twelve miles, the right to fish could be exercised only by the coastal State and by such other Contracting Parties, the fishing vessels of which had habitually fished in that belt between 1st January 1953 and 31st December 1962. In contrast to the 3-6 mile belt, no agreement on these historical rights was needed between the coastal state and the state claiming these rights. Within this 6-12 miles belt the coastal state was empowered to regulate the fisheries and to enforce such regulations.
39. Daniel Vignes, *La réglementation de la pêche dans le marché commun au regard du droit communautaire et le droit international*, 16 Annuaire Français Du Droit International 829-840, 829-831 (1970).
As confirmed by Regulation N° 101/76 replacing, Regulation N° 2141/70, which did not continue this derogation. See Council Regulation (EEC) N° 101/76 laying down a common structural policy for the fishing industry, Official Journal L.20 of 28 January 1976, at 1.
However, the codification in 1976 of the EA principle as being one of the fundamental norms on which the common fisheries policy was based, did not restrain Member States from taking measures aimed at restoring in a more or less disguised manner an exploitation regime to the profit of their nationals, contrary to the non-discrimination principle. E.g. the European Court of Justice condemned the Irish measures taken in 1977, which excluded certain vessel types from their coastal waters. See Case 61/77, *Commission v. Ireland*, European Court Reports 417-431 (1978).
40. See Tullio Treves, *The Law of the Sea, The European Union and its Member States* 1-590 (1997).
41. Act concerning the Conditions of Accession and the Adjustment to the Treaties Annexed to the Treaty Concerning the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and the European Atomic Energy Council, 27 March 1972, Official Journal L.73 of 27 March 1972.
42. Convention for Regulating the Police of the North Sea Fisheries, multilateral, 6 May 1882, 160 Consolidated Treaty Series 219.
This regime, did not grant any exclusive fishery rights beyond the three miles zone. The historical rights of the six participating States bordering the North Sea were guaranteed permanently within this belt. See Jean De Breucker, *La Belgique et le problème de la pêche*, in *La Belgique et le Droit de la Mer* 103-106 (1969).
43. This demand found its origin in the regime established by the 1964 European Fisheries Convention. More information see Mark Wise, *The Common Fisheries Policy of the European Community* 75-78 (1984).
44. Council Regulation (EEC) N° 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, Official Journal L.24 of 27 January 1983, at 1-13.
45. Council declaration of 30 May 1980 on the common fisheries policy, Official Journal C.158 of 27 June 1980, at 2.
46. Although the 1983 Regulation does not make explicit reference to the EA principle, its preamble indirectly confirms the definitive character of the principle by mentioning the supplementary status of the current regulation to the provisions of Council Regulation (EEC) N° 101/76 of 19 January 1976.
47. Article 6 § 1 of Regulation N° 170/83 reads: "[a]s from 1 January 1983 and until 31 December 1992, Member States shall be authorized to retain the arrangements defined in Article 100 of the 1972 Act of Accession and to generalize up to 12 nautical miles for all waters under their sovereignty or jurisdiction the limit of six miles laid down in that Article."
Gilbert Appolis, *Le régime communautaire d'accès aux lieux de pêche et aux stocks halieutiques*, 24 Annuaire Français du Droit International 665 (1983).
48. Article 6.2 of Reg. 170/83 reads as follows: "[i]n addition to the activities pursued under existing neighbourhood relations between Member States, the fishing activities under the arrangements established in paragraph 1 of this Article shall be pursued in accordance with the arrangements contained in Annex I, fixing for each Member

State the Geographical zones within the coastal bands of other Member States where these activities are pursued and the species concerned.”

49. Council Regulation 170/83, *supra* note 44, Article 6 § 1 and Article 8 § 2-3.
50. The 1979 Act of Accession, Official Journal L.291 of 19 November 1979, at 17.
51. This Article 110 reads as follows: “1. Notwithstanding Article 2(1) of Regulation (EEC) N° 101/76 laying down a common structural policy for the fishing industry and Article 100 of the 1972 Act of Accession, the Italian Republic and the Hellenic Republic shall be authorized, until 31 December 1985, to restrict, as between each other, fishing in waters under their sovereignty or jurisdiction, situated within the areas indicated in Article 111, to vessels which traditionally fish from ports in the geographical coastal area in these waters. 2. The provisions of paragraph 1 and of Article 111 shall not prejudice the special fishing rights which the Hellenic Republic and the Italian Republic may enjoy as between each other on 1 January 1981.
The waters referred to were to be found in Article 111: “The demarcation of areas referred to in Article 110 § 1 shall be made as follows: 1. Greece[:] waters situated inside a limit of six nautical miles calculated from the base lines. 2. Italy[:] waters situated inside a limit of six nautical miles calculated from the base lines. This limit shall be extended to 12 Nautical miles for the following areas: (A) Adriatic Sea, From the South of the mouth of the Po Di Goro; (B) Ionian Sea; (C) Sicilian Sea and straits of Sicily, including the Islands; (D) Waters of Sardinia.”
52. Churchill, *supra* note 3, 136.
Neither the 1983 Regulation, nor the 2002 Basic Regulation make reference to any Greek or Italian fishing rights in the coastal waters of another Member State.
53. Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties, Official Journal L.302 of 15 November 1985, Articles 157-163, at 23; Council Regulation No 2027/95 of 15 June 1995 establishing a system for the management of fishing effort relating to certain Community fishing areas and resources, Official Journal L.199 of 24 August 1995, at 1-8; Ronán J. Long, Peter A. Curran, Enforcing the Common Fisheries Policy 24 (1998).
54. Council Regulation (EEC) N° 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, Official Journal L.389 of 31 December 1992, 6th-7th Recital and Article 6 § 1-2, at 1.
55. Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, Official Journal L.236 of 23 September 2003, at 33-49.
56. Poland's negotiation position on fisheries. Available at www.elipsa.pl, as visited on 15/10/2004.
57. Council Regulation (EC) N° 88/98 of 18 December 1997 laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound, Official Journal L.9 of 15 January 1998, at 1.
58. Council Regulation (EC) No 2287/2003 of 19 December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and for Community vessels, in waters where catch limitations are required, Official Journal L.344 of 31 December 2003, Article 5 § 2, at 1-119.
59. *Ibid.* Article 14 b).
60. Agreement on fisheries relations between the European Community and the Republic of Latvia, Official Journal L.332 of 20 December 1996, at 2-5; Agreement on fisheries relations between the European Community and the Republic of Lithuania, Official Journal L.332 of 20 December 1996, at 7-10; Agreement on fisheries relations between the European Community and the Republic of Estonia, Official Journal L.332 of 20 December 1996, at 17-20.
61. Churchill, *supra* note 3, 89.



Europos Sąjungos plėtra ir žuvininkystė: ES jūros vandenų nacionalizacijos atgaline data teisinis aspektas

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Pagrindinės sąvokos: prieiga prie išteklių, kompetencijos pasidalijimas, jūrinių matų kaita, Europos bendroji žuvininkystės politika, EB sutartis.

SANTRAUKA

Europos Sąjungos plėtros etapas 2004 m. prasidėjo po ilgų ir sudėtingų derybų tarp ES ir valstybių kandidatų įvairiose politikos srityse. Šis procesas turėjo įtakos ir ES bendrajai žuvininkystės politikai, nes po kiekvieno plėtros proceso ES didėja Bendrijos laivynas ir plečiasi Bendrijos vandenys. Nuo pat pradžios žvejyba valdoma

pagal bendrąją žuvininkystės politiką, reikėjo nuolat prisitaikyti prie besikeičiančių aplinkybių. Ambicinga buvo ir 2002 m. reforma. Po penktojo ES plėtros etapo vėl keitėsi žuvininkystės reguliavimo politika, iš principo buvo pakeistas „kas ir kur turi teisę žvejoti“ reguliavimo metodas ir atsisakyta vienodo priėjimo prie vandenių principo, nes Europos Bendrija perleido savo išimtinę kompetenciją nustatyti ir reguliuoti Bendrijos pakrančių vandenį pakrančių valstybėms narėms, todėl Europos Sąjungos valstybės narės atgavo savo pajūrio vandenį.

Šiame straipsnyje išsamiai analizuojamas geografinis ES vandenų reguliavimas iki šių dienų. Pirmiausia pateikiamas istorinis, socialinis ir ekonominis šio reiškinio kontekstas. Detaliai apibrėžiamos geografinės ES bendrosios žuvininkystės politikos ribos. Trečiojoje straipsnio dalyje nagrinėjami du esminiai klausimai – valstybių narių kompetencija savarankiškai nustatyti vandenų reguliavimo priemones ir teisė drausti priėjimą prie nacionalinių vandenų valstybėms narėms, neturinčioms priėjimo prie Bendrijos vandenų. Ketvirtojoje straipsnio dalyje nuosekliai analizuojamas atgalinės Bendrijos vandenų nacionalizacijos procesas nagrinėjant Pirmąjį rėminį reglamentą, pirmąjį Bendrijų plėtros etapą, 1983 m. ir 2002 m. reformas bei paskutinio ES plėtros proceso rezultatus. Straipsnio pabaigoje pateikiamos išvados. Čia pabrėžiama, jog ES bendrosios žuvininkystės politikos pokyčiai, palankūs pakrančių valstybėms narėms, yra laikini ir po 2012 m. gruodžio 31 d. turės būti keičiami.

