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MEDAC advice on the codend Technical Measures Regulation (EU) n.2019/1241

Numerous queries have been received about mesh size, the structure of the codend and extension piece and, above all, about the different shapes and, consequently, the minimum baseline mesh size for towed gear deployed in the Mediterranean, as defined in Annex IX, part B of Regulation 2019/1241 (hereafter referred to as the TMR). This is partly because there would appear to be differing interpretations by the supervisory authorities of the various Member States.

The Commission services have intervened several times in an attempt to clarify the matter, most recently with the note (ARES) 3475725 of 8 May 2024, which, however, does not provide a conclusive interpretation, recalling that *"the document expresses the view of the Commission services and does not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law"*.

In the abovementioned note, it was clarified that the minimum mesh size refers to the codend and to the extension piece within the meaning of the combined provisions of Articles 6(33) and 8(1) of the TMR, which must therefore be read together as a whole.

Article 8(1) states that *"For the purpose of Annexes V to XI, the mesh size of a towed gear as set out in those Annexes shall mean the minimum mesh size of any codend and any extension piece found on board a fishing vessel and attached to, or suitable for attachment to, any towed net. This paragraph shall not apply to netting devices used for the attachment of gear monitoring sensors or when used in conjunction with fish and turtle excluder devices. Further derogations to improve size or species selectivity for marine species may be provided for in a delegated act adopted in accordance with Article 15."*

Article 6(33) defines the codend as follows: *"'codend' means the rearmost part of the trawl, having either a cylindrical shape, with the same circumference throughout, or a tapering shape. It can be made up of one or more panels (pieces of netting) attached to one another along their sides and can include the lengthening piece which is made up of one or more panels located just in front of the codend sensu stricto"*.

While observing the prescribed minimum mesh size, uncertainty remains as to whether it is possible to have square-shaped parts and diamond-shaped parts in the same net. This option appears to be excluded by footnote 2 to the table in point 1 part B of Annex IX to the TMR where it states that *"Only one type of net (either 40 mm square mesh or 50 mm diamond mesh) is allowed to be kept on board or deployed"*.

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Our view is that any evaluation should be based on the effects of the different mesh shapes on selectivity (square mesh and diamond mesh), but also on the costs of the different options. As long as compliance with the established mesh sizes is ensured, regardless of the shape, the different types should be allowed within each net, given that the sizes envisaged in the Regulation guarantee selectivity.

Based on the above, MEDAC,
considers that:

- without prejudice to the requirement to use minimum regulatory mesh sizes of 40 mm for square and 50 mm for diamond mesh, compliance with the provision in footnote 2 to the table in point 1 Part B of Annex IX to the TMR may be deemed to have been achieved whatever the shape of the net in the codend and in the extension piece;

hereby declares:

- that it is willing to provide support to the MEDAC Member States for the purpose of applying the provision on regionalisation envisaged in Article 15 of the TMR, with specific reference to the following:
 - a) from par. 15.5 according to which *“The application of the conditions in relation to the mesh size specifications set out in Article 27 and in Part B of Annexes V to XI shall not lead to a deterioration of selectivity standards...”*¹, and
 - b) paragraph 6 according to which: *“In the joint recommendations submitted for the purpose of adopting the measures referred to in paragraph 2, the Member States shall provide scientific evidence to support the adoption of those measures”*.

¹ In this regard, it is hardly necessary to recall that the two types of mesh (square or diamond) are both generally allowed according to the aforementioned Annex IX of the TMR, since in the case of use of the 50mm diamond mesh a mere ‘duly justified request by the owner’ is sufficient.