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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC) No 1098/2007 of 18 September 2007 establishing a multi-annual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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The objective of this proposal is to amend Council Regulation (EC) No 1098/2007 of 18 September 2007 establishing a multi-annual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks ("the plan"). This act was adopted prior to the entry into force of the Treaty on the Functioning of the European Union (TFEU).

The plan has as its core objective to ensure that Baltic cod stocks can be exploited under sustainable economic, environmental and social conditions. To attain it, the plan lays down rules for the establishment of the annual fishing opportunities for this stock in terms of total allowable catch and fishing effort. Such rules use certain technical parameters, by reference to which the stock can be considered to be in better or worse conservation status, therefore closer to or further away from the plan's objective. These parameters are science-based and not a policy choice. Science may evolve and improve, and the plan needs to contain the necessary provisions to ensure it is kept up to date with the best science available.

Furthermore, Article 27 of the Regulation stipulates that if scientific advice indicates that the fishing mortality rates are disaccording with the objectives of the plan, the Council must by qualified majority revise mortality rates as to ensure that the plan can attain its management objectives. The current text therefore confers the power to amend these non-essential elements of the plan on the Council. Such decision-making procedure is no longer possible under the TFEU.

Similarly, Article 26 provides for modification by the Council of certain non-essential elements of the plan to ensure that the objectives are met.

Article 290 of the TFEU provides that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. By way of consequence, the decision-making procedure foreseen in Article 26 and 27 of the Regulation should be converted into a system of delegated powers to be exercised by the Commission under the conditions set out in the plan itself. The plan should therefore be amended accordingly.

The plan requires evaluation of the impact of the management measures on the stocks concerned and on the fisheries concerned. The timeline set in the Regulation in force is neither feasible nor efficient. This requirement encounters considerable difficulties due to the limited availability of relevant data to carry out appropriate assessment. According to scientific advice a full evaluation of 3 year performance of the plan cannot be conducted until 5 years from the commencement of the plan. Consequently, the timeline for evaluation of the plan should be modified.

Implementing powers should be given to the Commission to confirm whether the conditions established in Article 29 of this Regulation are fulfilled and, consequently whether relevant provisions apply in the subdivisions concerned.

Additionally, the Commission and Member States signed up to the aim of achieving a maximum sustainable yield (MSY) for depleted stocks by 2015 at the latest, but it is not indicated as objective of the plan. To avoid any ambiguities in the plan the reference to the maximum sustainable yield should be included in the plan.

Article 5 and 8 should be amended accordingly to clarify that the procedure at issue is that provided for by the Treaty.

This amendment is primarily aimed at changes enabling this plan to work efficiently within the new decisional framework set up by the Lisbon Treaty.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Not applicable

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed action

The main legal action is to identify the powers conferred upon the Commission in Council Regulation (EC) No 1098/2007 and to classify these as delegated or implementing powers.

• Legal basis

Article 43(2) of the Treaty on the Functioning of the European Union.

• Subsidiarity principle

The proposal falls under exclusive competence of the European Union.

• Proportionality principle

The proposal is amending measures which already exist in Council Regulation (EC) No 1098/2007, therefore no concern on the principle of proportionality arises.

• Choice of instrument

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: a Regulation must be amended by a Regulation.

4. BUDGETARY IMPLICATION

This measure does not involve any additional Union expenditure.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) To avoid any ambiguity and ensure consistency with international commitments of the Union for achieving a maximum sustainable yield for depleted stocks, the objectives of multi-annual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks, established by Council Regulation (EC) No 1098/2007², should be clarified accordingly.
- (2) Regulation (EC) No 1098/2007 provides for the follow-up and revision of the minimum fishing mortality rates specified therein in case of inadequacy of those rates to meet the objectives of that plan.
- (3) In accordance with Article 290 of the Treaty the Commission may be empowered to supplement or amend non-essential elements of a legislative act by means of delegated acts.
- (4) In order to achieve in an efficient way the targets set out in Regulation (EC) No 1098/2007 and be able to react swiftly to changes in stock conditions or in fishery, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the revision of the minimum fishing mortality rates, when scientific data indicate that the rates are no longer appropriate and measures are not sufficient to reach the objectives of the plan. It is of particular importance that the

¹ OJ C, , p. .

² OJ L 248, 22.9.2007

Commission carry out appropriate consultations during its preparatory work, including at expert level.

- (5) The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (6) In order to ensure uniform conditions for the implementation of Article 29 of Regulation (EC) No 1098/2007, implementing powers should be conferred upon the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers³.
- (7) To ensure the efficiency of an evaluation of the plan's performance the timeline of evaluation provided for in Regulation (EC) No 1098/2007 should be modified.
- (8) In addition, the decision making procedure concerning the setting of fishing opportunities referred to in Regulation (EC) No 1098/2007 should be clarified following the entry into force of the Treaty on the Functioning of the European Union.
- (9) The proposed amendments are therefore primarily aimed at changes enabling the plan to work efficiently within the new decisional framework set up by the Lisbon Treaty.
- (10) Regulation (EC) No 1098/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1098/2007 is amended as follows:

- (1) In Article 4, the introductory phrase is replaced by the following :

"The plan shall ensure the sustainable exploitation of the cod stocks concerned on the basis of maximum sustainable yield by gradually reducing and maintaining the fishing mortality rates at levels no lower than:"
- (2) In Article 5, paragraph 1 is replaced by the following:

"1. Each year the Council shall decide in accordance with the Treaty on the TACs for the cod stocks concerned for the following year."
- (3) In Article 8, paragraph 3 is replaced by the following:

"3. The Council shall decide each year in accordance with the Treaty on the maximum number of days absent from port outside periods specified in paragraph 1 in the following year when fishing with the gear referred to in paragraph 1 is allowed, in accordance with the rules set out in paragraphs 4 and 5."

³ OJ L 55, 28.2.2011, p. 13.

- (4) Article 26 is replaced by the following:

"Article 26

Evaluation of the plan

"Every five years from 18 September 2007, the Commission shall evaluate the operation and performance of this multi-annual plan. Where appropriate, the Commission may propose adaptations to the multi-annual plan or adopt delegated acts in accordance with Article 27."

- (5) Article 27 is replaced by the following:

"Article 27

Revision of minimum fishing mortality rates

The Commission shall be empowered to adopt delegated acts in accordance with Article 29a to revise the minimum fishing mortality rates set out in Article 4, when scientific data indicates that the values for the minimum fishing mortality rates are disaccording with the objectives of the management plan."

- (6) In Article 29 paragraphs 2, 3 and 4 are replaced by the following:

"2. Article 8(1)(b), (3), (4) and (5) shall not apply to ICES Subdivisions 27 and/or 28.2 if there is evidence that catches of cod in those ICES Subdivisions are lower than 3% of the total catches of cod in Area B. The Commission shall, each year, by means of implementing acts and on the basis of the reports from Member States referred to in paragraph 1 and of scientific data, confirm whether such evidence exists and, consequently, whether the restrictions provided for in Article 8(1)(b), (3), (4) and (5) apply in the subdivisions concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29b(2)"

3. Article 8(1)(b), (3), (4) and (5) shall only apply to ICES Subdivision 28.1, if there is evidence that the catches of cod are higher than 1.5% of the total catches of cod in Area B. The Commission shall, each year, by means of implementing acts and on the basis of the reports from Member States referred to in paragraph 1 and of scientific data, confirm whether such evidence exists and, consequently, whether the restrictions provided for in Article 8(1)(b), (3), (4) and (5) apply in the subdivision concerned. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29b(2)"

4. The implementing acts referred to in paragraphs 2 and 3 shall apply from 1 January to 31 December of the following year."

- (7) The following Chapter VIa is inserted:

"Chapter VIa

"Article 29 a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 26 and 27 shall be conferred on the Commission for an indeterminate period of time.
3. The delegation of power referred to in Articles 26 and 27 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 26, and 27 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."

"Article 29b

Committee procedure

1. The Commission shall be assisted by the Committee for Fisheries and Aquaculture established by Article 30 of Regulation (EC) No 2371/2002. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply."

"Article 29c

Council decisions

Where this Regulation provides for decisions to be taken by the Council, the Council shall act in accordance with the Treaty."

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President