



EUROPEAN COMMISSION

Brussels, 2.8.2012
COM(2012) 432 final

2012/0208 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EC) No 850/98 concerning the conservation of fishery
resources through technical measures for the protection of juveniles of marine
organisms**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Treaty on the Functioning of the European Union (TFEU) makes a distinction between the powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act as laid down in Article 290(1) of the TFEU (delegated acts), and the powers conferred upon the Commission to adopt uniform conditions for implementing legally binding Union acts as laid down in Article 291(2) of the TFEU (implementing acts).

In relation to the adoption of Regulation (EU) No 182/2011, the Commission made the following statement:

"The Commission will proceed to an examination of all legislative acts in force which were not adapted to the regulatory procedure with scrutiny before the entry into force of the Lisbon Treaty, in order to assess if those instruments need to be adapted to the regime of delegated acts introduced by Article 290 of the Treaty on the Functioning of the European Union. The Commission will make the appropriate proposals as soon as possible and no later than the dates mentioned in the indicative calendar annexed to this declaration."¹

In this context Regulation (EC) No 850/98 needs to be aligned with the new rules of the TFEU. Powers currently conferred upon the Commission by that Regulation should be reclassified into delegated and implementing powers.

The Commission should therefore be empowered to adopt delegated acts concerning the division of regions into geographical areas, to amend the rules for the use of mesh size combinations and to establish rules for obtaining the percentage of target species taken by more than one fishing vessel in order to ensure that such catch compositions are respected by all the vessels involved in the fishing operation. Similarly, the Commission should be empowered to draw up rules concerning the technical descriptions and method of use of authorised devices that might be attached to the fishing net, and which do not obstruct or diminish the effective mesh opening of the net. The Commission should also be empowered to adopt measures on conditions under which certain vessels shall be permitted to use beam trawls, the method for measuring engine power and gear dimensions and measures designed to address changes in the conservation status of fish stocks with immediate effect.

Likewise the Commission should be empowered to adopt implementing acts concerning technical rules for measuring mesh sizes, square-meshed netting and twine thickness, technical rules related to the construction of netting materials, listing of devices that may obstruct or otherwise diminish the effective mesh opening in a fishing net, the transmission of lists of vessels to which a special fishing permit to use beam trawls has been issued, technical rules related to measuring engine power and gear dimensions, measures concerning the obligation of Member States to ensure that levels of fishing effort are not exceeded and temporary measures where the conservation of stocks of marine organisms calls for immediate action.

¹ OJ L 55, 28.02.2011, p.19

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

There was no need for consultation of interested parties or for impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

- The main action is to identify the powers conferred upon the Commission in Council Regulation (EC) No 850/98 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 Regulation (EC) No 850/98, therefore no concern on the proportionality principle 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.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Council Regulation (EC) No 850/98 concerning the conservation of fishery
resources through technical measures for the protection of juveniles of marine
organisms

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 Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 850/98² confers powers upon the Commission in order to implement some of the provisions of that Regulation.
- (2) As a consequence of the entry into force of the Lisbon Treaty, certain powers conferred under Regulation (EC) No 850/98 need to be aligned with Articles 290 and 291 of the Treaty on the Functioning of the European Union.
- (3) In order to apply certain provisions of Regulation (EC) No 850/98, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the following:
 - the division of regions into geographical areas;
 - to amend rules concerning the conditions for the use of certain mesh size combinations;
 - to adopt detailed rules for obtaining the percentage of target species taken by more than one fishing vessel, in order to ensure that such percentages are respected by all the vessels involved in the fishing operation;

² OJ L 125, 27.4.98, p. 1

- to adopt rules concerning the technical descriptions and method of use of authorised devices that might be attached to the fishing net, and which do not obstruct or diminish the effective mesh opening of the net;
 - conditions under which vessels exceeding eight meters length overall shall be permitted to use beam trawls within certain waters of the Union;
 - measures designed to address unexpectedly small or large recruitments of juveniles, changes in migration patterns or any other changes in the conservation status of fish stocks, with immediate effect.
- (4) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for the adoption of delegated acts, 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 the provisions of Regulation (EC) No 850/98 implementing powers should be conferred upon the Commission concerning the following:
- technical rules for measuring mesh sizes;
 - square-meshed netting and twine thickness;
 - technical rules related to the construction of netting materials;
 - listing of devices that may obstruct or otherwise diminish the effective mesh opening in a fishing net;
 - transmission of lists of vessels to which a special fishing permit to use beam trawls has been issued;
 - technical rules related to measuring engine power and gear dimensions;
 - the obligation of Member States to ensure that levels of fishing effort are not exceeded in certain areas of ICES Division IXa, and
 - temporary measures where the conservation of stocks of marine organisms calls for immediate action.
- (7) The implementing powers conferred upon the Commission, except those concerning the obligation of Member States to ensure that levels of fishing effort are not exceeded in certain areas of ICES Division IXa, 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.

³ OJ L 55, 28.2.2011, p.13

(8) Regulation (EC) No 850/98 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 850/98 is amended as follows:

(1) In Article 2, paragraph 3 is replaced by the following:

"3. The regions referred to in paragraph 1 may be divided into geographical areas, in particular on the basis of the definitions referred to in paragraph 2. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a concerning the division of regions into geographical areas for the purpose of identifying geographical areas where specific technical conservation measures apply."

(2) Article 4 is amended as follows:

(a) In paragraph 4, the following point (c) is added:

"(c) The Commission shall be empowered to adopt delegated acts in accordance with Article 48a to amend Annex X and Annex XI, in order to increase the protection of juvenile fish in the context of the conservation of fish stocks."

(b) In paragraph 5, point (b) is replaced by the following:

"(b) The Commission shall be empowered to adopt delegated acts in accordance with Article 48a concerning the method of calculation of the percentages of target species and of other species retained on board when these have been taken by a net or nets towed simultaneously by more than one fishing vessel, and the method of verification for ensuring that any fishing vessels involved in the joint fishing operation that retain fish on board comply with the percentages of species as set out in Annexes I to V."

(c) Paragraph 6 is replaced by the following:

"6. Technical rules for measuring mesh sizes, including for control purposes, shall be determined by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2)."

(3) In Article 7 the following paragraph 8 is added:

"8. Technical rules for measuring square-meshed netting, including for control purposes, shall be determined by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2)."

(4) In Article 8 the following paragraph 4 is added:

"4. Technical rules concerning the measuring of twine thickness and the construction of netting material, including for control purposes, shall be determined by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2)."

(5) Article 16 is replaced by the following:

"Article 16

1. No device shall be used by means of which the mesh in any part of the fishing net is obstructed or otherwise effectively diminished.

2. Paragraph 1 shall not exclude the use of certain devices which may obstruct or otherwise effectively diminish the mesh in any part of the fishing net but which may serve to protect or strengthen the net. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a concerning the technical descriptions and the method of use and attachment of such devices.

3. An exhaustive list of devices that comply with the technical descriptions established according to paragraph 2, and which may be attached to the fishing net, shall be determined by implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2)."

(6) Article 29 is amended as follows:

(a) Paragraph 6 is replaced by the following:

"6. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a concerning detailed conditions for the application of the criteria set out in paragraph 2 under which vessels exceeding eight meters length overall shall be permitted to use beam trawls in the areas set out in paragraph 1."

(b) the following paragraph 7 is added:

"7. The Commission shall establish the operational requirements for transmission of the lists to be provided to the Commission by Member States as referred to in paragraph 2(c), first indent, by means of an implementing act. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2)."

(7) In Article 29b, paragraph 6 is replaced by the following:

"6. Member States shall communicate to the Commission their measures to fulfil the obligation laid down in paragraph 5. If the Commission finds that the measures of a Member State do not fulfil that obligation, it may propose amendments to those measures. Where no agreement on the necessary measures is reached between the Commission and the Member State concerned, the Commission may establish such measures by means of implementing acts."

(8) In Article 34, paragraph 6 is replaced by the following:

"6. Technical rules for measuring engine power and gear dimensions shall be determined by means of an implementing act. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2)."

(9) Article 45 is replaced by the following:

"Article 45

1. The Commission shall be empowered to establish, by means of delegated acts adopted in accordance with Article 48a, technical conservation measures on the use of towed or fixed gear or on fishing activities in certain areas or during certain periods in addition to or by way of derogation to this Regulation. Those measures shall be designed to address unexpectedly small or large recruitments of juveniles, changes in migration patterns or any other changes in the conservation status of fish stocks, with immediate effect.
2. Where the conservation of stocks of marine organisms calls for immediate action, the Commission may decide on temporary measures by means of implementing acts to remedy the situation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(3).
3. Where the conservation of certain species or fishing grounds is seriously threatened, and where any delay would result in damage which would be difficult to repair, a Member State may take appropriate non-discriminatory conservation measures in respect of the waters under its jurisdiction.
4. The measures referred to in paragraph 3, together with an explanatory memorandum, shall be communicated to the Commission and the other Member States as soon as they are adopted.

Within ten working days of receipt of such communication, the Commission shall confirm the appropriateness and non-discriminatory nature of such measures, or require their cancellation or amendment by means of implementing acts. The Commission's decision shall be immediately notified to the Member States."

(10) In Article 46, paragraph 4 is replaced by the following:

"4. At the initiative of the Commission, or at the request of any Member State, the question of whether a national technical measure applied by a Member State complies with paragraph 1 of this Article may be the subject of a decision taken by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Should such a decision be taken, the third and fourth subparagraphs of paragraph 2 shall apply."

(11) Article 48 is replaced by the following:

"Article 48

1. The Commission shall be assisted by the Committee for fisheries and aquaculture established by 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.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply."

(12) The following Article 48a is inserted:

"Article 48a

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 2(3), 4(4)c, 4(5)b, 16(2), 29(6) and 45(1) shall be conferred for an indeterminate period of time.
3. The delegation of powers referred to in Articles 2(3), 4(4)c, 4(5)b, 16(2), 29(6) and 45(1) may be revoked at any time by the European Parliament or by the Council. A decision of revocation 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 2(3), 4(4)c, 4(5)b, 16(2), 29(6) and 45(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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 2 months at the initiative of the European Parliament or the Council."

Article 2

This Regulation shall enter into force on the 20th 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