

Opinion of the European Economic and Social Committee on the ‘Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea’

COM(2011) 479 final — 2011/0218 (COD)
(2012/C 43/12)

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On 6 September the Council and, on 13 September, the European Parliament decided to consult the European Economic and Social Committee, under Article 43 of the Treaty on the Functioning of the European Union, on the

Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea

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The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 21 November 2011.

At its 476th plenary session of 7 and 8 December 2011 (meeting of 7 December), the European Economic and Social Committee adopted the following opinion by 166 votes to 1 with 12 abstentions:

1. Conclusions and recommendations

1.1 The Committee endorses the changes proposed by the Commission to the 2006 regulation, whose aim remains the establishment of sustainable fishing in the region by improving the exploitation of living aquatic resources and by protecting sensitive habitats, while taking account of the specificities of small-scale coastal fishing in the Mediterranean.

1.2 The Committee believes that the impact of these new measures on global fishery resources in the Mediterranean will be insignificant, although no assessment has been carried out.

2. The Commission’s proposals

2.1 Summary

The aim of the proposal is to take stock of delegated powers provided for in Regulation (EC) No 1967/2006 and to put in place procedures for the adoption of corresponding delegated acts by the Commission, which is now empowered to adopt:

- delegated acts to grant derogations from some of the provisions of the regulation when such a possibility is explicitly foreseen and provided that the strict conditions set out by that regulation are fulfilled;
- criteria to be applied for the establishment and allocation of fish aggregating device (FAD) course lines for dolphinfish fishery in the 25-mile management zone around Malta;
- detailed rules for further technical specifications on the characteristics of fishing gears; and

— delegated acts regarding the amendments to the annexes.

Legal basis

Articles 43(2), 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).

— Subsidiarity principle

The proposal falls under the exclusive competence of the European Union.

— Proportionality principle

The proposal amends measures which already exist in Council Regulation (EC) No 1967/2006. No concerns are raised, therefore, concerning the principle of proportionality.

— Choice of instruments

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 (principle of congruent forms).

BUDGETARY IMPLICATION

This measure does not involve any additional Union expenditure.

2.1.1 This is a revision of Council Regulation (EC) No 1967/2006 of 21 December 2006 on fishery resources in the Mediterranean Sea, the final legislative act. The principal legal basis for this revision of the regulation is Article 43 of the TFEU (ex Article 37 TEC), which gives the Commission the power to present proposals for working out and implementing the Common Agricultural Policy and, more relevant here, the Common Fisheries Policy.

2.2 However, the proposal is also based on Article 290 TFEU (ex Article 202 TEC), which creates a new category of act – delegated acts – which ‘flesh out the detail or amend certain elements of a legislative act, under some form of authorisation defined by the legislator’.

2.3 The objectives, content, scope and duration of the delegation of power must be explicitly defined in the legislative acts subject to this legal regime (Article 290(1) TFEU). Acts delegated to the Commission in this way are non-legislative acts that concern non-essential elements of the legislative act, which must explicitly lay down the conditions to which the delegation is subject. Delegation to the Commission is thus strictly circumscribed and the European Parliament or the Council may decide to revoke the delegation under certain conditions (Article 290(2)(a)).

2.4 Furthermore, the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act (Article 290(2)(b)). The adjective ‘delegated’ must be inserted in the title of delegated acts.

2.5 Moreover, the powers conferred on the Commission enable it to adopt uniform conditions for implementing legally binding Union acts, as provided for in Article 291(2) of the TFEU (implementing measures).

2.6 In the context of the alignment of Regulation (EC) No 1967/2006 to the new rules of the TFEU, powers currently conferred on the Commission by that regulation have been re-classified into measures of delegated nature and measures of implementing nature in the proposal for an amended regulation of 9 August 2011 ⁽¹⁾.

3. General comments

3.1 The Committee notes that only the legislator decides whether or not to authorise the use of delegated acts. This enables the legislator to concentrate on the legislation’s key provisions without having to enter into the technicalities, which may extend to post hoc changes to some non-essential elements of the legislation in question. It is the legislator who decides in advance what is essential and what is not.

3.2 The ‘call back’ right of the Parliament and the Council gives the legislator the power to recover at any time his full legislative power: in this event, the Parliament decides by a majority of its members and the Council by a qualified majority. The delegation of power expires at the date set in the legislative act if a clause to this effect (sunset clause) is included. If appropriate, the delegation of power to the Commission must be renewed when it expires.

3.3 The legal basis for the proposal for an amended regulation is (the new) Article 43(2) of the TFEU, which gives powers to the EU regarding the CFP. The Committee agrees with the Commission that the proposal complies with the proportionality principle, since it only changes elements that already exist in the 2006 regulation, which gave the Commission delegated powers for updating certain non-essential provisions.

3.4 The Committee also notes that the principle of congruent forms is respected, since the act in question is a regulation, which alone can amend another regulation. Finally, it is not expected that any new budget expenditure will be needed to implement the amended regulation. The main features of the regulation to be amended are:

- the introduction of 40mm square mesh of bottom trawls and, under certain circumstances, diamond meshed net of 50 mm by 1 July 2008 at the latest;
- the general rule still involves a ban on the use of trawl nets within 1.5 nautical miles. However, trawling activities within the coastal bands (between 0.7 and 1.5 nautical miles) could continue to be authorised under certain conditions.

3.4.1 The regulation to be amended also:

- introduces technical measures to improve the selectivity of the current 40 mm mesh size for towed nets;
- strengthens the current ban on the use of towed gear in coastal areas;
- limits the overall sizes of certain fishing gear that affects fishing effort;
- introduces a procedure for establishing temporary or permanent closures of areas to specific fishing methods, either in Community or international waters;
- provides for the adoption of management plans combining the use of effort management with technical measures;

⁽¹⁾ COM(2011) 479 final.

— allows EU Member States to regulate, in their territorial waters and under certain conditions, fishing activities that do not have any significant Community dimension or environmental impact, including certain local fisheries currently authorised under Community law.

4. Specific comments

4.1 The amending regulation contains two types of provision: procedural provisions regarding the exercise of delegated powers by the Commission, and technical measures concerning the granting of derogations to certain fishing vessels concerning the size and engine power of ships benefiting from derogations and the fishing methods they use, as well as authorised fishing areas.

4.2 The Committee notes that these procedural provisions comply with the new TFEU.

4.3 On the other hand, it wonders whether the technical provisions permitting derogation from technical provisions of the 2006 regulation can be defined as non-essential provisions as required by Article 290 TFEU, since they are in effect derogations from measures that seek to protect fishery resources in the Mediterranean, which are at risk from overfishing.

4.4 The Committee notes that there were protracted discussions in the Council on these provisions and that one Member State abstained. No impact assessment has been made to show that the changes proposed are 'insignificant' and so justify recourse to the new measures in Articles 290 and 291 of the TFEU.

4.5 Nevertheless, the Committee thinks that the proposals for derogations will enable small-scale fishing operators in the region to better cope with the global economic crisis and increased operation costs, especially fuel.

Brussels, 7 December 2011.

The President
of the European Economic and Social Committee
Staffan NILSSON
