



EUROPEAN COMMISSION

Brussels, 9.8.2011
COM(2011) 479 final

2011/0218 (COD)

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**

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 the context of the alignment of Regulation (EC) No 1967/2006 to the new rules of the TFEU, powers currently conferred to the Commission by that Regulation have been re-classified into measures of delegated nature and measures of implementing nature.

Following this exercise, a draft proposal for amendment of Regulation (EC) No 1967/2006 has been prepared.

Pursuant to Article 290 of the Treaty, the Legislator gives the Commission the task to complete or modify certain non-essential elements of that Regulation.

The Commission may therefore adopt delegated act to grant derogations to some of the provisions of that Regulation when such possibility is explicitly foreseen and provided that the strict conditions set out by that Regulation are fulfilled (article 4 and 13). The Commission is empowered to adopt the criteria to be applied for the establishment and allocation of fish aggregating devices (FAD) course lines for dolphinfish fishery in the 25-mile management zone around Malta (article 27). Similarly, the Commission is empowered to adopt detailed rules for further technical specifications on the characteristics of fishing gears (Annex I paragraph (B) 3 and Annex II paragraph 7) which will supplement existing characteristics of gears. In addition, the Commission shall adopt delegated acts regarding the amendments to the Annexes of this Regulation.

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

Identify the delegated powers of the Commission in Council Regulation (EC) No 1967/2006 and establish the corresponding procedure for adoption of these acts.

• 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 1967/2006, 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 Committee,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 1967/2006¹ 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, the powers conferred under Regulation (EC) No 1967/2006 upon the Commission need to be aligned to Articles 290 of the Treaty on the Functioning of the European Union.
- (3) In order to apply some of the provisions of Regulation (EC) No 1967/2006, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the following:
 - the granting of derogations where they are specifically provided for in that Regulation;
 - the setting of criteria to be applied for the establishment and allocation of fish aggregating devices (FAD) course lines for dolphin fish fishery in the 25-mile management zone around Malta;
 - the adoption of detailed rules for further technical specifications of square mesh panels to be inserted into towed nets;

¹ OJ L 409, 30.12.2006, p. 11.

- the adoption of technical specifications limiting the maximum dimension of float line, ground rope, circumference or perimeter of trawl nets along with the maximum number of nets in multi-rig trawl nets, and
 - the amendments to the Annexes to Regulation (EC) No 1967/2006.
- (4) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. 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 Council.
 - (5) For clarity reasons the reference to seagrass beds of *Posidonia oceanica* in article 4(5) should be modified.
 - (6) Further technical and scientific information is needed to duly take into account the specificities of the Mediterranean fisheries to enable the Commission to establish possible technical specifications limiting the maximum dimension of trawl nets and the maximum number of nets in multi-rig trawl nets, as mentioned above;
 - (7) Regulation (EC) No 1967/2006 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1967/2006 is amended as follows:

- (1) In Article 4(5), the introductory phrase is replaced by the following:

"5. By way of derogation from subparagraph 1 of paragraph 1, the Commission may, by means of delegated acts adopted in accordance with Article 30a, authorise fishing by vessels of less than or equal to 12 metres overall length and engine power of less than or equal to 85 kW with bottom towed nets traditionally undertaken above seagrass beds of the type *Posidonia oceanica*, provided that:"
- (2) Article 13 is amended as follows:
 - (a) Paragraph 5 is replaced by the following:

"5. Member States may request a derogation from paragraphs 1, 2 and 3. The Commission may, by means of delegated acts adopted in accordance with Article 30a, allow such derogations on condition that they are justified by specific geographical features of the sea areas concerned, such as the limited size of continental shelf along the entire coastline of a Member State or the limited extent of trawlable fishing grounds, where the fisheries have no significant impact on the marine environment and affect a determined group of vessels of the Member State or, as the case may be, of other Member States, and provided that those fisheries cannot be undertaken with another gear and are subject to a management plan as referred to in Articles 18 or 19. Member States shall provide up-to-date scientific and technical justifications for such derogations."

(b) Paragraph 10 is replaced by the following:

"10. Derogations from paragraphs 1 and 2 shall be allowed, by means of delegated acts adopted in accordance with Article 30a, for fisheries benefiting from a derogation under Article 4(5) ."

(3) In Article 26(3), the first subparagraph is replaced by the following:

"If the overall fishing capacity referred to in paragraph 2(a) exceeds the overall fishing capacity of trawlers with an overall length equal to, or less than, 24 metres and operating in the management zone in the reference period 2000-2001 (hereinafter, "the reference fishing capacity"), the Commission shall, by means of delegated acts adopted in accordance with Article 30a, distribute that surplus of available fishing capacity between the Member States taking into account the interest of the Member States requesting an authorisation."

(4) In Article 27(3) the second subparagraph is replaced by the following:

"The Commission shall, by means of delegated acts adopted in accordance with Article 30a, establish the criteria to be applied for the establishment and allocation of FAD course lines."

(5) Article 30 is replaced by the following:

"The Annexes shall be amended by means of delegated acts adopted in accordance with Article 30a."

(6) The following Article 30a is inserted:

"Article 30a

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 powers referred to in Articles 4(5), 13(5) and (10), the first subparagraph of Article 26(3), the second subparagraph of Article 27(3), Article 30, Annex I(B)(3) and Annex II(7) shall be conferred for an indeterminate period of time from the date of the entry into force of this Regulation.

3. The delegation of powers referred to in Articles 4(5), 13(5) and (10), the first subparagraph of 26(3), the second subparagraph of 27(3), Article 30, Annex I(B)(3) and Annex II(7) 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 4(5), 13(5) and (10), the first subparagraph of Article 26(3), the second subparagraph of Article 27(3), Article 30, Annex I(B)(3) and Annex II(7) 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."

(7) In Annex I, section B, point 3 is replaced by the following:

"3. Square mesh panels may be inserted into any towed net and shall be placed in front of any extension piece or at any point between the front of any extension piece and the posterior of the cod-end. It shall not be obstructed in any way by either internal or external attachments. It shall be constructed of knotless netting or of netting constructed with non-slip knots, and shall be inserted in such a way that the meshes remain fully open at all times while fishing. Detailed rules for further technical specifications of square mesh panels shall be established by means of delegated acts adopted in accordance with Article 30a ."

(8) In Annex II, point 7 is replaced by the following:

"7. Technical specifications limiting the maximum dimension of floatline, groundrope, circumference or perimeter of trawl nets along with the maximum number of nets in multi-rig trawl nets may be established by the Commission by means of delegated acts adopted in accordance with Article 30a."

Article 2

This Regulation shall enter into force on the third 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