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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Regulation of the European Parliament and
of the Council on the Common Fisheries Policy**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and 13 July 2011
to the Council
(document COM(2011) 425 final – 2011/0195 COD):

Date of the opinion of the European Economic and Social 28 March 2012
Committee:

Date of the opinion of the Committee of the Regions: 4 May 2012

Date of the position of the European Parliament, first reading: 6 February 2013

Date of adoption of the position of the Council: 17 October 2013

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The overall objective of the proposal for a new Regulation on the Common Fisheries Policy is to ensure fishing and aquaculture activities that provide long-term sustainable environmental conditions and contribute to the availability of food supplies.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1. General comments on Council position:

The Commission agrees with the Council position, as the compromise political agreement between the European Parliament and the Council maintains all the key elements of the Commission's original proposal. Most importantly, it includes 1) a legal obligation subject to deadlines to manage fish stocks sustainably, 2) a legal obligation subject to deadlines to eliminate discarding of fish, 3) a system of regionalization allowing decision making as close as possible to stakeholders. Other amendments, including on multiannual plans, rules on access to waters, establishment of fish stock recovery areas, allocation of fishing opportunities, management of fishing capacity, data collection, the external dimension, control and enforcement and consultation and composition of advisory councils are acceptable for the Commission as well.

3.2. Amendments by the European Parliament at first reading:

The European Parliament introduced over 230 amendments, on all parts of the COM proposal. Most of these amendments were composed of more than one paragraph of an Article.

During trilogues all amendments of the European Parliament were reviewed and negotiated. As a result, no one amendment was fully integrated in the Council position at first reading, with the exception of: amendment 116 (on MS emergency measures), 118 (avoidance and minimization of unwanted catches), 137 (system of transferable fishing concessions), 243 (expert group on compliance), 196 (contribution to control costs), 200 (on the creation of new Advisory Councils). These were integrated without or with only minor adjustments.

For many of the European Parliament amendments the Council position is formulated in such a way that it incorporates (at least partially, or wholly) the thrust of the amendments. This is the case in particular for Article 2 (objectives, amendments 60, 61, 235), Article 3 (principles of good governance, amendments 62, 220), Articles 6, 7 and 8 (general provisions on conservation measures, types of measures and establishment of fish stock recovery areas, amendments 101, 102, 103), the technical measures (amendments 104, 295), Articles 9 and 10 (multiannual plans, amendments 105, 106, 107, 108, 239), Article 11 (conservation measures in relation to compliance under Union environmental legislation, amendments 109, 111, 258), Article 12 (Commission emergency measures, amendment 115), Article 15 (landing obligation, amendment 119), Articles 16 and 17 (fishing opportunities, amendments 120, 227, 264, 293, 301), Articles 20 and 21 (MS conservation measures, amendments 131-136), Articles 22-24 (on fleet capacity management, amendments 138, 241, 139, 140, 141), Article 25 (science base for fisheries management and consultation of the Scientific, Technical, Economic Committee for Fisheries, amendments 142-160, 285), Articles 28-32 (external policy, amendments 161-176, 230), Article 34 (aquaculture, amendments 178-181, 242), Article 35 (common market organization, amendments 183-188), Article 44 (Advisory Councils, amendment 201, 202), and new Articles 49 and 50 (on evaluation and annual reporting by the Commission, amendments 209, 210).

In article 18 (regionalization, amendments 121-130) only few elements of the Parliament's amendments are integrated in the Council position (Parliament accepted the Council's alternative model, as reflected in the Council text). Amendments to Article 36 (control and enforcement, amendments 189-193, 195, 225, 226) and Articles 41 and 42 (on financial instruments amendments 197, 199, 302) were incorporated only partly in the Council position.

3.3. New provisions introduced by Council and Commission position in this regard:

The Council introduced no new provisions other than those already introduced by the European Parliament (fish stock recovery areas, avoidance of unwanted catches, transparent criteria for MS when allocating quotas).

Council did nonetheless expand the scope for regionalization, from multiannual plans and technical measures frameworks only, to measures under environmental obligations, to adoption of specific discard plans, and to other conservation measures. The Commission can accept the regionalization model and a broader scope for the redrafted regionalization model.

Council also changed the Commission's proposal on management of fishing capacity. While agreeing with the Parliament in eliminating the obligation for Member States to introduce a system of transferable fishing concessions, Council reintroduced the system as optional, where Member States have the possibility to decide on the introduction of transferable concessions. Council and Parliament have agreed on this optional system in combination with continuation of existing fleet capacity measures, and addition of the obligation for Member States to develop where appropriate action plans to achieve the balance between their fleets and their fishing opportunities over time. The Commission can accept this compromise as it can be effective in adjusting fleet capacity in combination with the financial conditionality introduced in the agreed text, which the Commission considers proportionate.

3.4. Problems encountered in the adoption of the position at first reading and Commission position in this regard:

During finalization of negotiations an agreement was reached on empowerment of the Commission, through delegated and implementing Acts. The Commission can accept the agreed arrangements. In particular the modalities for delegated/implementing Acts under regionalization meet the institutional requirements and will contribute to deliver a more effective policy.

However, concerning specific institutional provisions in the regionalization model (Article 18) and the limitation of Commission powers under Comitology in relation to Article 22 (implementing rules for the entry-exit regime), the Commission sees the need to make statements to clarify its position.

Similarly the Commission sees a need to make a statement on its position in relation to provisions in Part VI (external policy) and in particular in Article 28 paragraph 3.

4. CONCLUSION

The Commission can agree with the Council position which is the outcome of the negotiations with the European Parliament. Nevertheless, the Commission sees the need to make statements in relation to Articles 18.1 and 18.3, 18.7, and 18.8, to Part VI (in particular Article 28.3) and to Article 47.2 second part (in relation to Article 22), as follows.

Ad Article 18

(on paragraphs 1 and 3) The Commission underlines that the empowerment of the Commission to adopt measures set out in the Member States' joint recommendations by means of implementing or delegated acts cannot affect the Commission's discretion to adopt such acts.

(on paragraph 7) The ability of the Member States having a direct management interest to prepare common joint recommendations cannot affect the Commission's exclusive right of initiative to submit proposals in the Common Fisheries Policy field.

(on paragraph 8) In the light of Article 2(1) TFEU, paragraph 8 cannot be understood as conferring automatically, in the absence of further Union legislation, an authorization on Member States to adopt legally binding acts in an area of exclusive Union competence. In case the Commission considers that such acts are not compatible with the Common Fisheries Policy objectives, Member States should act in accordance with the principle of loyal cooperation in order to remove any incompatibility with Union law.

Ad Part VI and in particular Article 28 paragraph 3

The provisions of Part VI on the External policy are not susceptible to affect the validity of Council decisions or negotiating directives from the Council to the Commission in accordance with Article 218 TFEU or of agreements concluded with third states or organizations in accordance with Article 218 TFEU.

Ad Article 47 paragraph 2 second part

The Commission underlines that it is contrary to the letter and to the spirit of Regulation 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke Article 5 § 4, subparagraph 2, point b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5 § 4 recourse to subparagraph 2, point b) cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.