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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EC) No 1100/2007 establishing measures for the recovery
of the stock of European eel**

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 declaration¹."

In this context Regulation (EC) No 1100/2007 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 to take measures to address a significant decline of average market prices for eels used for restocking, as compared to those of eels used for other purposes.

Likewise the Commission should be empowered to adopt implementing acts concerning the approval of Eel Management Plans by the Commission on the basis of technical and scientific data.

Article 9(3) provides for adoption by the Council of alternative measures to achieve escapement target levels. The current text therefore confers the power to amend this non-essential element of the Regulation on the Council. Such decision making procedure is no longer possible under the TFEU and that provision should be deleted.

Article 1(2) of the Regulation has become obsolete as it was established by Commission Decision 2008/292/EC of 4 April 2008² that the Black Sea and the river systems connected to it did not constitute a natural eel habitat for European eel for the purposes of the Regulation. That provision should therefore be deleted.

In addition, Article 3 of the Regulation has become obsolete as Commission Decision 2009/310/EC of 2 April 2009³ approved requests by Cyprus, Malta, Austria, Romania and Slovakia to be exempted from the from the obligation to prepare an Eel Management Plan.

¹ OJ L 55, 28.2.2011, p.19

² OJ L 98, 10.4.2008, p. 14

³ OJ L 91, 3.4.2009, p. 23

There are no pending requests for exemption from that obligation. That provision should therefore be deleted.

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 legal action is to identify the powers conferred upon the Commission in Council Regulation (EC) No 1100/2007 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 amends measures which already exist in Regulation (EC) No 1100/2007, 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.

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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,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 1100/2007⁴ confers powers upon the Commission in order to implement some of the provisions of that Regulation.
- (2) As a consequence of that entry into force of the Lisbon Treaty, the powers conferred under Regulation (EC) No 1100/2007 upon the Commission need to be aligned to 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 1100/2007, 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 taking measures to address a significant decline of average market prices for eels used for restocking, as compared to those of eels used for other purposes.
- (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 Council.

⁴ OJ L 248, 22.9.2007, p. 17.

- (6) In order to ensure uniform conditions for the implementation of the provisions of Regulation (EC) No 1100/2007 concerning the approval of Eel Management Plans by the Commission on the basis of technical and scientific data, 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 powers⁵.
- (7) The Commission will not be in a position to report to the European Parliament and the Council on the measures concerning restocking, including the evolution of market prices by 1 July 2011, due to late transmission by some Member States of the relevant information. The deadline for this report should therefore be postponed to 31 December 2012.
- (8) The current text of the Regulation concerning the power to adopt alternative measures for the achievement of escapement targets confers this power to amend this non-essential element of the Regulation on the Council. As such decision making procedure is no longer possible under the TFEU, the provision concerned should be deleted.
- (9) It was established by Commission Decision 2008/292/EC of 4 April 2008⁶ that the Black Sea and the river systems connected to it did not constitute a natural eel habitat for European eel for the purposes of the Regulation. Therefore Article 1(2) of the Regulation has become obsolete and should be deleted.
- (10) Commission Decision 2009/310/EC of 2 April 2009⁷ approved requests by Cyprus, Malta, Austria, Romania and Slovakia to be exempted from the from the obligation to prepare an Eel Management Plan. There are no pending requests for exemption from that obligation. Therefore Article 3 of the Regulation has become obsolete and should be deleted.
- (11) Regulation (EC) No 1100/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1100/2007 is amended as follows:

- (1) In Article 1, paragraph 2 is deleted.
- (2) Article 3 is deleted.
- (3) In Article 5, paragraph 1 is replaced by the following:

⁵ OJ L 55, 28.2.2011, p.13

⁶ OJ L 98, 10.4.2008, p. 14

⁷ OJ L 91, 3.4.2009, p. 23

"1. The Eel management plans shall be approved by the Commission by means of implementing acts adopted in accordance with the examination procedure referred to in Article 12b(2)"

(4) In Article 7, paragraphs 6 and 7 are replaced by the following:

"6. In the event of a significant decline of average market prices for eels used for restocking, as compared to those of eels used for other purposes, the Member State concerned shall inform the Commission. The Commission, by means of delegated acts adopted in accordance with Article 12a and in order to address the situation, may temporarily reduce the percentages of eels used for restocking as referred to in paragraph 2.

7. The Commission shall, not later than 31 December 2012, report to the European Parliament and the Council and evaluate the measures concerning restocking including the evolution of market prices."

(5) In Article 9, paragraph 3 is deleted.

(6) The following Articles 12a and 12b are inserted:

*"Article 12a
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 Article 7(6) shall be conferred for an indeterminate period of time.
3. The delegation of powers referred to in Article 7(6) 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 Article 7(6) 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 12b
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 2

This Regulation shall enter into force on the 20th day following that of its publications 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