



EUROPEAN COMMISSION

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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 812/2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98**

## 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."<sup>1</sup>

In the context of the alignment of Regulation (EC) No 812/2004 to the new rules of the TFEU, powers currently conferred to the Commission by that Regulation have been reclassified into measures of delegated nature and measures of implementing nature.

The Commission should therefore be empowered to adopt delegated acts to adapt conditions and technical specifications for the use of acoustic deterrent devices. Likewise the Commission should be empowered to adopt implementing acts concerning the procedure and format for reporting obligations for Member States.

### **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**

To identify the powers conferred upon the Commission in Council Regulation (EC) No 812/2004 and to classify these as delegated or implementing powers.

#### **• Legal basis**

Article 43(2) of the Treaty on the Functioning of the European Union.

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<sup>1</sup> OJ L 55, 28.02.2011, p.19

- **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 182/2004, 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 812/2004<sup>2</sup> 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 Commission powers conferred for the implementation of Regulation (EC) No 812/2004 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 812/2004, 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 technical specifications and conditions of use of acoustic deterrent devices.
- (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 812/2004 concerning rules on the procedure and format for reporting obligations for Member States, implementing powers should be conferred

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<sup>2</sup> OJ L 150, 30.4.2004, p. 12.

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 powers<sup>3</sup>.

(7) Regulation (EC) No 812/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 812/2004 is amended as follows:

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

"1. Acoustic deterrent devices used in application of Article 2(1) shall comply with technical specifications and conditions of use. The conditions and specifications are defined in Annex II. The Commission shall be empowered to amend Annex II by means of delegated acts adopted in accordance with Article 8a, in order to adapt that Annex to technical and scientific progress."

(2) Article 8, is replaced by the following:

#### *"Article 8 Implementation*

Detailed rules on the procedure and format for reporting, as set out in Article 6 may be established by means of implementing acts adopted in accordance with the examination procedure referred to in Article 8b(2)."

(3) The following Articles 8a and 8b are inserted:

#### *"Article 8a 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 power referred to in Article 3(1) shall be conferred for an indeterminate period of time.
3. The delegation of powers referred to in Article 3(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.

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<sup>3</sup> OJ L 55, 28.2.2011, p.13

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 3(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 8b*  
*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 20<sup>th</sup> 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*