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A new CFP: framework for technical measures and multiannual plans
(2015/2092(INI))

Committee on Fisheries

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on a new CFP: framework for technical measures and multiannual plans (2015/2092(INI))

The European Parliament,

- having regard to the Treaty on the Functioning of the European Union (TFEU) and in particular Article 43,
 - having regard to Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, in particular Articles 7(2), 9 and 10,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Fisheries (A8-0000/2015),
- A. whereas, since 2009, legislative proposals regarding technical measures and multiannual plans have made little headway, partly on account of tensions arising between the European institutions concerning their respective decision-making powers under Article 43 TFEU with regard to Commission proposals in the case of the multinational plans and partly because of difficulties in bringing legislation into line with the Lisbon Treaty regarding the technical measures;
- B. whereas the reform of the common fisheries policy (CFP) included among its objectives the achievement of maximum sustainable yield (MSY), using an ecosystem-based approach; whereas technical measures and multiannual plans, which are concerned with conservation, are the main tools to achieve these objectives;
- C. whereas the main changes introduced under the 2013 CFP reform also include discard elimination and regionalisation;
- D. whereas technical measures are currently so complex, diverse and disorganised, as to be frequently inconsistent or even contradictory, not to mention being difficult for those in the fisheries sector to comprehend;

- E. whereas the complexity of the technical measures and the difficulties arising, coupled with the absence of any tangible results or incentives under the CFP have contributed to making fishermen mistrustful;
- F. whereas the review of technical measures, based on a solid scientific approach, should seek to improve the sustainability of fishery resources without compromising the economic viability of fishing activity;
- G. whereas the discard ban and maximum sustainable yield objective require the use of more selective fishing gear;
- H. whereas the discard ban involves a radical change of approach to fisheries management, and hence to technical measures in key areas such as catch composition;
- I. whereas the failure of the Council to adopt a clear position has prevented the alignment of legislation regarding technical measures with the Treaty of Lisbon; whereas, following the CFP reform, the deadlock is apparently being resolved through delegated acts adopted by the Commission on the proposal of Member States;
- J. whereas the definition of basic principles common to all basins through a framework regulation adopted by codecision ('ordinary legislative procedure' under the Lisbon Treaty), is necessary to ensure a level playing field between operators and facilitate the implementation and monitoring of technical measures;
- K. whereas codecision is not necessary for measures taken at regional level or subject to frequent changes, but must be used for the adoption of rules that are common to all sea basins or not likely to be amended in the foreseeable future;
- L. whereas regionalisation can ensure that rules are adapted to the specific requirements of each fishery and each basin, ensuring flexibility and facilitating a rapid response to any emergencies arising;
- M. whereas regionalisation can help make the rules simpler and more comprehensible, which would be greatly welcomed by the fisheries sector, especially where it is involved in the adoption thereof;

- N. whereas regionalisation should not lead to renationalisation, this being incompatible with the CFP, under which the EU has sole responsibility, given the shared nature of the resources;
- O. whereas the adoption of technical measures on a regional basis should follow the model agreed by the co-legislators under the new common fisheries policy, namely for adoption by the Commission of delegated acts on the basis of joint recommendations from the Member States concerned;
- P. whereas certain proposals for specific regulations containing technical measures (concerning driftnets, cetacean bycatches, ban on on-board shark finning or deep-sea fishing) have proved controversial; whereas some proposals, such as those concerning deep-sea fishing in the northeast Atlantic, have been blocked for over three years; whereas deliberations on driftnet fishing are also deadlocked; whereas a number of specific provisions regarding technical measures, such as those concerning on-board shark finning, have been rejected by the RFMOs,
- Q. whereas technical measures applicable in the Mediterranean are not always adapted to the needs of the different local fisheries;
- R. whereas the Mediterranean basin is very different to other EU fishing basins, since it is shared by third countries with conservation rules very different to those of Europe;
- S. whereas the multiannual plans adopted between 2002 and 2009 were not all equally effective, the least satisfactory being attributed to the shortcomings of certain instruments and verification procedures;
- T. whereas CFP reform introduced landing requirements while failing to do anything to make the TAC and quota systems less inherently rigid;
- U. whereas difficulties in implementing the discard ban in mixed fisheries are likely to arise with 'choke' species; whereas the multiannual plans should therefore seek to promote instruments, such as fishing effort regulation, that are unconstrained by the rigidities of the TAC and quota system, thereby helping to ensure maximum sustainable yield and improve the economic performance of fleets at a given fishing mortality rate;

- V. whereas, following the Treaty of Lisbon, the European Parliament has joint legislative powers with regard to fisheries, aside from TACs and quotas;
- W. whereas it has, since 2009, been unable to adopt any multiannual plan, proposals having remained deadlocked in Council;
- X. whereas, within the inter-institutional task force on multiannual plans, the co-legislators recognised the importance of working together on the multiannual plans, so as to find practical solutions, despite differences regarding interpretation of the legal framework provisions;
- Y. whereas multi-annual plans should provide a robust and lasting fisheries management framework, based on the best and most recent scientific and socio-economic findings and flexible enough to adapt to the evolution of stocks and annual decision making on the allocation of fishing opportunities;
- Z. whereas, within the inter-institutional taskforce on multiannual plans, a maximum sustainable yield target and deadline for achieving it, a conservation safeguard trigger mechanism, a mechanism for adapting to unforeseen changes in scientific thinking and a review clause were identified as the elements common to future multiannual plans;
- AA. whereas the plans must set a general objective that is achievable in administrative and scientific terms; whereas it should include high and stable yields, something which must be reflected in annual Council decisions regarding fishing opportunities in the light of the latest scientific intelligence; whereas these annual decisions should be strictly confined to the allocation of fishing opportunities, and should as far as possible seek to avoid large fluctuations in this respect;
- AB. whereas the judgment of the Court of Justice of 26 November 2014 in Cases C-103/12 Parliament v Council and C-165/12 Commission v Council concerning the allocation of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana, establishes a precedent by clarifying the content and the limits of two different legal bases contained in Article 43 TFEU; whereas Article 43(3) may only be used as a legal basis for the allocation of fishing opportunities under the TAC and quota regulations;

- AC. whereas the judgment of the Court of Justice is still pending in Case C-124/13 EP v Council regarding Council Regulation (EU) No 1243/2012 establishing a long-term plan for cod stocks, in which the Parliament submitted that, given its aim and content, the regulation should have been adopted on the basis of Article 43(2) TFEU through the ordinary legislative procedure with Parliament as co-legislator; whereas Parliament is also opposed to dividing up the Commission proposal, the Council having split it into two legislative acts;
- AD. whereas progress has been made with the multi-annual plan for the Baltic, the Council having agreed to work jointly with the EP on the adoption of fishing mortality targets;
- AE. whereas, in the absence of multiannual plans, minimum conservation reference sizes may be modified under discard plans adopted by the Commission in delegated acts on the recommendations of the Member States concerned;
- AF. whereas discard plans will play an essential role in view of the changes in fishing techniques and hence fishing mortality and individual spawning biomass, both quantifiable objectives under the multiannual plans, possibly brought about by modifications in minimum conservation sizes; whereas, modification of minimum sizes though delegated acts would mean changing the principal parameters of the multiannual plans from the outside;
- AG. whereas the co-legislators intended these delegated acts to be of a transitional nature, under no circumstances applying for over three years;
- AH. whereas, for the same species, minimum conservation sizes may vary from one area to another in order to take into account the specific nature of the fisheries and the fishing gear employed; whereas, whenever possible, horizontal decisions for all areas are desirable in order to facilitate monitoring;
1. Considers that future technical measures should be simplified, contained in a clearly structured legal framework and based on a solid scientific approach;
 2. Believes that technical measures must be reviewed in a bid to simplify and standardise

current rules, improve the scientific base and make it more consistent and more acceptable to the fisheries sector;

3. Considers that, as far as possible, technical measures should be adapted to the specific needs of each fishery and each region, thus helping to improve compliance by the industry concerned;
4. Considers that, in order to make CFP rules more acceptable to the fisheries sector and ensure compliance therewith, fishermen must be more involved in decision making, given incentives such as more aid for innovation and encouraged to use more selective fishing gear;
5. Considers it necessary to maintain the co-decision procedure for the adoption of rules common to all sea basins or for those are not likely to be amended within the foreseeable future;
6. Believes codecision to be unnecessary for measures adopted at regional level or possibly subject to frequent changes;
7. Considers that rules regarding technical measures should be structured on three co-decisional axes and a fourth regionalisation axis. The first three would comprise a set of common centralised rules, a set of specific rules for the larger sea basins and a number of specific technical regulations, all of which would be adopted by co-decision; Notes that regionalisation would apply to rules applicable at regional level or subject to frequent changes
8. Considers it necessary to assess the suitability, effectiveness and socio-economic implications for EU fleets of specific regulations based on technical measures, such as those concerning driftnets, incidental cetacean catches, the ban on on-board shark finning or deep-sea fishing;
9. Believes that there is an urgent need to establish a coherent set of technical operational procedures for each of the three main basins, taking account of the specific nature of each, especially that of the Mediterranean, where Community decisions may have a significant impact on competition between European and third-country fishing fleets;

10. Maintains that, notwithstanding the discard ban, provisions regarding technical measures in areas such as catch composition must be sufficiently flexible to adapt in real time to progress in the fisheries and more selective fishing techniques;
11. Considers that a review of technical measures must take account their impact in terms of not only resource conservation but also fishing operating costs and profitability;
12. Believes that the conservation objective of the regulation on technical measures could be achieved more effectively through actions aimed at improving supply and demand management, focusing to a greater extent on producer organizations, thereby optimizing the results being sought by EU provisions;
13. Believes that multi-annual plans are being called on to play an increasingly significant role in the conservation of fisheries resources under the CFP, being the most suitable vehicle for the adoption and implementation of specific technical measures at regional level;
14. Believes that the co-legislators must continue to seek agreement on multiannual plans on the basis of the case-law established by the EU Court of Justice;
15. Believes that multi-annual plans should form a robust and lasting framework for fisheries management, be based on best and most recent scientific and socio-economic findings and be adapted to the evolution of stocks, as well as providing flexibility for annual Council decisions on fishing opportunities; notes that these annual decisions should not exceed the strict scope of the allocation of fishing opportunities, and should, as far as possible, seek to avoid large fluctuations thereof;
16. Maintains that it is necessary to devise future multiannual plans for achieving maximum sustainable yield, including an advance timetable, a conservation safeguard trigger, a mechanism for adapting to changes in scientific thinking and a review clause;
17. Considers that, in order to avoid problems arising from compulsory landings for mixed fisheries, it would be advisable to find ways of regulating the fishing effort free of the rigidities of TACs and quotas;
18. Believes it necessary to increase the involvement of stakeholders through the Advisory

Councils in the formulation and implementation of multiannual plans and in all decisions concerning regionalisation;

19. Believes that the European Parliament should give particularly close scrutiny to delegated acts regarding discard plans;
20. Considers that the transitional validity of the delegated acts regarding discard plans, including changes to the minimum sizes, should not in any case exceed three years and should be replaced, where appropriate, by a multi-annual plan and that, to that end, multiannual plans should be adopted as soon as possible;
21. Takes the view that, in the context of regionalisation, it is necessary to avoid the proliferation of decisions on minimum sizes for each species, since this would make verification harder and could lead to marketing irregularities or fraud;
22. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

1. Introduction

The 2013 reform of the common fisheries policy (CFP) sought among other things to secure maximum sustainable yields (MSY), using an ecosystem-based approach. Technical measures and multiannual plans have become the principal conservation instruments for achievement of this objective.

Since 2009, however, legislative proposals concerning technical measures and multiannual plans have made little headway. In the case of multinational plans, this has been due to an inter-institutional deadlock arising from the fact that the Commission's legislative proposals for multi-annual plans included the distribution of fishing opportunities among catch control measures, thereby leading to disagreements regarding Article 43 TFEU. In the case of technical measures, difficulties arose in bringing legislation into line with the Lisbon Treaty.

2. Technical measures

Technical measures have been introduced to prevent catches of juveniles and other by-catches. In principle, the system is based on three sets of geographically distinct arrangements (Baltic Sea, Mediterranean and Atlantic and other waters), consisting of a specific set of rules, and sometimes forming part of a wider range of management instruments, such as multiannual plans. They also include provisions relating to matters, such as the prohibition of driftnets, the prevention of incidental cetacean catches or the ban on on-board shark finning. In fact, the technical measures are contained in over 30 different regulations and are so complex, diverse and disorganised as to be inconsistent or even contradictory.

The complexity of the technical measures is partly due to the different legislative procedures and motivations giving rise to them. Some of them were sought by regional fisheries management organisations (RFMOs), while others were adopted under annual TAC and quota regulations. However, most of them were adopted by the Council or Commission under the

comitology procedure, before the entry into force of the Lisbon Treaty and without the involvement of the European Parliament.

The diversity and inconsistency of the technical measures is partly due to the fact that many of them were progressively adopted by the Council under the annual total allowable catch (TAC) and quota regulations. A number of them are therefore the result of political negotiations between the Member States and have little scientific basis, resulting in unjustified disparities between the different sea areas. Following the entry into force of the Lisbon Treaty of Lisbon, the various TACs and quotas must be adopted jointly by Parliament and Council.

The geographical basis of the technical measures is reflected clearly in the special treatment given to the Mediterranean, concerning which a more or less coherent set of measures was only adopted in 2006. However, the Mediterranean Advisory Council has on several occasions requested a review of certain technical measures. It is worth noting that, in its recent study on technical measures,¹ the Commission omitted the Mediterranean, regarding it as too complex.

Some of the technical measures take the form of specific regulations. In most cases the legislative procedure has proved controversial. In particular, the proposal regarding deep-sea fishing in the north-east Atlantic² has been stalled for more than three years. Deliberations on driftnet fishing³ have also ground to a halt. These difficulties and disputes can be attributed to the content of the proposals. On some issues such as on-board shark finning,⁴ the provisions have been rejected by the RFMOs, leaving EU fleets at a disadvantage compared to those from third countries. In other cases, such as the regulation on cetacean bycatches,¹ their effectiveness remains to be assessed.

Moreover, the regulations on technical measures contain a series of exemptions and derogations and all the provisions have been amended. For example, Regulation (EC) No 850/1998 has been amended fourteen times. The complexity of the technical measures has increased with these successive amendments. There are a number of inconsistencies, with no

¹ A study in support of the development of a new technical conservation measures framework within a reformed CFP. Project no: ZF1455_S02. 7 July 2014

² COM (2012) 0371 final - 2012/0179 (COD)

³ COM (2014) 0265 final - 2014/0138 (COD)

⁴ Regulation (EU) No 605/2013 of the European Parliament and the Council of 12 June 2013

clear distinction being made between the scope of delegated and implementing acts respectively, thereby hampering progress on legislative proposals. Accordingly, all the technical measures have for some time needed to be rationalised, simplified and adapted to the Lisbon Treaty.

In 2002 and 2008, a number of attempts were made to review all technical measures¹. One failed and a second finally turned out to be simply another in a very long series of amendments. Neither was any progress made on the legislative proposals seeking to align the three main geographical regulations with the Lisbon Treaty.

In May 2014, the Commission concluded a public consultation on a new framework of technical measures under the reformed CFP. Most of the Member States that responded regarded it as necessary to simplify technical measures to ensure a level playing field, requiring continued co-decision for the adoption of certain provisions. It was felt that the degree of regionalisation in regarding technical measures should be determined by factors such as practical implementation and the need for monitoring and surveillance. Stakeholders in the fisheries sector favoured a minimalist approach to the new set of technical measures, ruling out co-decision on micro-management issues. At the same time, NGOs felt the need for a general framework of technical measures including general objectives and minimum common standards to apply throughout the EU to in a bid to eliminate management shortcomings. Simplification at the expense of environmental protection was therefore undesirable.

Codecision will be necessary to ensure a level playing field and to facilitate enforcement and control under the future regulation on technical measures. Management can be simplified through regionalisation, ensuring the rules are adapted to the specific needs of each fishery and each basin, ensuring flexibility and allowing a rapid response in case of emergencies. In addition, it will help to simplify and clarify the rules, something which would be welcomed by stakeholders, particularly those involved in ensuring that the rules are implemented. However, full regionalisation is not consistent with the CFP, under which the EU has sole competence, the resources being shared.

¹ Council Regulation (EC) No 12/2004 of 26 April 2004

Codecision therefore does not seem necessary for measures applicable at regional level or possibly be subject to frequent changes but should continue to apply to rules common to all sea basins and unlikely to be amended in the foreseeable future.

Technical measures should be structured on three co-decisional axes and a fourth regionalisation axis. The first three would comprise a set of common centralised rules, a set of specific rules for the larger sea basins and a number of specific technical regulations adopted by co-decision. Regionalisation would apply to rules applicable at regional level or subject to frequent changes.

3. Multiannual plans

Multiannual plans are concerned with management of the principal species being fished. All of them seek to establish stock management objectives in terms of individual breeding biomass and fishing mortality. Most of the eleven multi-annual plans currently drawn up are concerned with total allowable catches (TACs). However, a number of them also refer to other instruments such as technical measures, fishing effort restrictions or specific monitoring rules.

These plans came into being after the 2002 CFP reform. Two of them regulate RFMO stocks of bluefin tuna and Greenland halibut, while the others regulate stocks in EU waters in line with instructions issued by the International Council for the Exploration of the Sea (ICES). Between 2002 and 2009 they made relatively little headway, and since 2009 no plans have been adopted, owing to the deadlock in Council.

The multiannual plans have been only partially effective, the least satisfactory results being attributed to weaknesses in mechanisms for reducing and monitoring fishing activities. It must be remembered that the CFP now attaches less importance to fleet management and effective fishing capacity. Although various crises have led to substantial fleet reductions, this has been accompanied by a much smaller reduction in fishing capacity.

Despite their importance, they have made little headway in recent years because of the interinstitutional deadlock arising from differences between Parliament and Council regarding the legal basis thereof, in particular regarding the choice between Article

¹ COM(2002) 672 and COM(2008) 324

43(2) or 43(3) TFEU. Under Article 43 (3), decision-making power rests entirely with the Council, while Parliament is excluded. On 26 November 2014, the Court of Justice delivered a judgment on two cases¹ brought by the Parliament and the Commission against a Council decision concerning the allocation of fishing opportunities in EU waters to fishing vessels flying the flag of the Bolivarian Republic of Venezuela in the exclusive economic zone off the coast of French Guiana. This ruling establishes a precedent by clarifying that Article 43(3) may only be used as a legal basis for the allocation of fishing opportunities under the TAC and quota regulations;

A ruling of the Court of Justice is still pending in Case C-124/13 EP v Council regarding Council Regulation (EU) No 1243/2012 establishing a long-term plan for cod stocks, in which the Parliament submitted that, given its aim and content, the regulation should have been adopted on the basis of Article 43(2) TFEU through the ordinary legislative procedure with Parliament as co-legislator. Parliament is also opposed to dividing up the Commission proposal, the Council having split it into two legislative acts.

Moreover, in April 2014, the interinstitutional task force on the multiannual plans concluded its deliberations, during which the co-legislators recognised the importance of working together to find practical solutions, notwithstanding differences in their interpretation of the legal framework provisions. It was regarded as important for the multiannual plans to form a robust and sustainable framework for fisheries management based on the best available scientific intelligence, while allowing the necessary flexibility in line with stock adjustments and annual decisions regarding fishing opportunities.

It was acknowledged that future multiannual plans would need to include a maximum sustainable yield target and a deadline for achieving it, a conservation safeguard trigger, a mechanism for adapting to new scientific intelligence and a review clause.

Following the 2013 CFP reform of the CFP, multiannual plans must all include a maximum sustainable yield target and a deadline for achieving it, discard ban and compulsory landing implementation provisions², remedial safeguards and review clauses. Two quantifiable targets for multiannual plans, fishing mortality and spawning stock biomass, are also established.

¹ Cases C-103/12 Parliament v Council and C-165/12 Commission v Council

² Compulsory landing - Article 15 of Regulation (EU) No 1380/2013 of the European Parliament and the Council of 11 December 2013

While the CFP reform introduced a discard ban, it failed to resolve the rigidities inherent in the system of TACs and quotas. In view of the predictable problems with 'choke species' in mixed fisheries,, it seems reasonable to favor certain instruments, such as fishing effort regulation, that are less rigid than the TAC and quota arrangements. In addition, regulation of fishing effort would make it easier to establish a maximum sustainable yield objective, improving the economic performance of the fleet for a given fishing mortality⁴. 2013 PPC reform

An essential element of CFP reform which affects both multiannual plans and technical measures is regionalisation¹ or regional cooperation regarding conservation measures. Multiannual plans seem to be the most suitable vehicle for the adoption and implementation of specific technical measures in the context of regionalisation.

Where the Commission is accorded delegation of powers relating to multiannual plans, the conservation measures necessary under EU environmental legislation or compulsory landing, the Member States affected may submit joint recommendations within a specified period. Regarding the implementation of these recommendations, Member States are required to consult the Advisory Councils. The Commission may adopt the measures recommended by delegated acts and may also submit proposals if the Member States do not all succeed in agreeing on joint recommendations within the time limit set. The Commission may also submit proposals if the joint recommendations are deemed not to be compatible with the objectives and quantifiable targets of the conservation measures. The only possible action that may be taken by the European Parliament is to object to a delegated act within a period of two months.

These new provisions have an impact on technical measures and largely depend on the presence or absence of multiannual plans and require the adoption of delegated acts by the Commission. For example, where no multiannual plan or management plan has been adopted for a given fishery, the Commission is empowered to adopt delegated acts laying down on a temporary basis (no more than three years) a specific discard plan, which can also include modifications regarding minimum size².

¹ Regional cooperation for conservation measures. Article 18 of Regulation (EU) No 1380/2013 of the European Parliament and the Council of 11 December 2013

² Article 15(6) of Regulation (EU) No 1380/2013

Moreover, the Regulation on the compulsory landing¹ introduced a number of modifications to the three regulations regarding regional technical measures (Atlantic, Mediterranean and Baltic). Discard plans have become the main vehicle for change through the delegation of powers to the Commission. It has empowered the Commission to set minimum sizes for the conservation of species subject compulsory by means of delegated acts and, where necessary, to grant derogations from minimum reference sizes. This occurred in the Baltic discards plan², under which the minimum cod size was reduced from 38 cm to 35cm. In most cases, minimum conservation will be adopted by the Commission through delegated acts. This will facilitate the adoption of certain measures on a regional basis, while minimum conservation sizes will be applied at a higher level, possibly modifying significantly the development of multiannual plans. A minimum size modification means different fishing techniques, in turn affecting fishing mortality and the age pyramid of breeding individuals. The basic CFP regulation makes these two parameters measurable objectives of the multiannual plans¹. Modification of the minimum sizes in a delegated act would mean modifying the main parameters of multiannual plans from the outside. It must be remembered that minimum sizes play an essential role in marketing and in the monitoring of fishing activities.

5. Position of the rapporteur

5.1. Multiannual plans

The co-legislators must find practical solutions enabling multiannual plans to make rapid headway further to the case-law established by the EU Court of Justice.

Increased involvement of stakeholders in the formulation and development of multiannual plans is also necessary.

Finally, multiannual plans should be adopted as soon as possible, thereby ensuring that long-term measures are not regulated through discard plans, which should only be provisional in nature.

5.2. Technical measures

¹ Articles 1(10), 2(5) and 3(5) of Regulation (EU) No 2015/812 of the European Parliament and of the Council of 20 May 2015

² Commission Delegated Regulation (EU) n° 1396/2014 of 20 October 2014

Future technical measures must be simple and clear so that they can be easily understood by fishermen.

As far as possible, they should be adapted to the specific needs of each fishery and each region (regionalisation).

However, provisions that are common to all sea basins or unlikely to be modified in the foreseeable future must be adopted by the EU co-legislators under the ordinary legislative procedure, i.e. codecision.

Indeed, full regionalisation would not be compatible with the CFP, under which the EU has sole competence, given that the resources are shared.

Finally, fishermen must be far more closely involved in the decision-making process down to the very last detail of the technical measures. Incentives must also be provided to ensure compliance therewith.

¹ Article 10(1)(c) of Regulation (EU) No 1380/2013 of the European Parliament and the Council of 11 December 2013