



EUROPEAN COMMISSION

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Proposal for a

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

**amending Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The objective of this proposal is to amend Council Regulation (EC) No 1300/2008 of 18 December 2008 establishing a multi-annual plan for the stock of herring distributed to the west of Scotland and the fisheries exploiting that stock ("the Plan"). This act was adopted prior to the entry into force of the Treaty on the Functioning of the European Union (TFEU).

The Plan has as its core objective to ensure the exploitation of the herring stock in the area west of Scotland on the basis of maximum sustainable yield (Article 3(1)). To attain it, the Plan lays down rules for the establishment of the annual fishing opportunities for this stock in terms of total allowable catch. Such rules use certain technical parameters, by reference to which the stock can be considered to be in better or worse conservation status, therefore closer to or further away from the Plan's objective. These parameters are science-based, not a policy choice. Science may evolve and improve, and the Plan needs to contain the necessary provisions to ensure it is kept up to date with the best science available.

Thus, Article 7 of the Regulation stipulates that if it appears that the fishing mortality rates and associated spawning stock biomass levels used for the purposes of the Plan are no longer appropriate in light of scientific advice, the Council must revise such parameters so as to ensure that the plan can attain its management objectives. The current text therefore confers the power to amend these non-essential elements of the Plan on the Council. Such decision-making procedure is no longer possible under the TFEU.

Similarly, Article 8 provides for modification by the Council of certain elements of the plan (including the biological reference levels set out in Article 3(2) and further mentioned in Articles 4(2) to 4(5) and 9) and for adoption by the Council of measures alternative or additional to the plan. Article 1 currently indicates the area of application of the plan. It is appropriate to delete the reference to the geographical area of application of the plan, which should become part of the definition of the stock. This is because, when setting annual TACs or regulating the long-term exploitation via the plan, both the TACs and the plan should follow the stock's biology, and not the other way around. The contrary would lead to illogical results: if, for example, the stock's biological behaviour changed and it migrated on a permanent basis somewhere else, the plan and the TACs would be applying to an area "empty" of herring.

Article 290 of the TFEU provides that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. By way of consequence, the decision-making procedure foreseen in Article 7 and 8 of the Regulation should be converted into a system of delegated powers to be exercised by the Commission under the conditions set out in the Plan itself and where the analysis has shown that the currently envisaged procedures may be qualified as delegated powers in accordance with Article 290 of the TFEU. The Plan should therefore be amended accordingly.

This amendment is limited to changes enabling this plan to work efficiently within the new decisional framework set up by the Lisbon Treaty.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

Not applicable.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

### **• Summary of the proposed action**

Identify the powers to be delegated to the Commission in Council Regulation (EC) No 1300/2008 and establish the corresponding procedure for adoption of these acts and adapt certain provisions to the decision-making procedures of the Lisbon Treaty.

### **• 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 1300/2008, 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.

The proposal modifies Articles 1, 2, 7 and 8 of the Plan to grant the delegation of powers to the Commission, and introduces a new Article 9a stipulating the conditions under which this delegation is granted. The drafting follows the standard clauses attached to the "Common Understanding" on delegated acts between the European Parliament, the Council and the Commission. No urgency procedure is required.

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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<sup>1</sup>,

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 1300/2008 establishing a multi-annual plan for the stock of herring distributed to the West of Scotland and the fisheries exploiting that stock empowers the Council to follow-up and revise the maximum fishing mortality rates and associated spawning stock biomass levels specified in Article 3(2) and referred to in Articles 4(2), 4(5) and 9 thereof.
- (2) In accordance with Article 290 of the Treaty the Commission may be empowered to supplement or amend non-essential elements of a legislative act by means of delegated acts.
- (3) In order to allow for an efficient achievement of the targets set in the multi-annual plan and for a swift reaction to changes in stock conditions, the power to revise maximum fishing mortality rates and associated spawning stock biomass levels, when scientific data indicate that these values are no longer appropriate to reach the objective of the plan, should be delegated to the Commission in accordance with Article 290 of the Treaty.
- (4) Since herring in the west of Scotland is a migrating species, the specification of the area it currently inhabits should serve to identify it from other stocks, but should not

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prevent this plan for applying in the event that the species changes its mobility patterns. Articles 1 and 2 should be modified accordingly.

- (5) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (6) 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.
- (7) At the occasion of this amendment, a mistake in the heading of Article 7 should be corrected.
- (8) Regulation (EC) No 1300/2008 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 1300/2008 is amended as follows:

- (1) Article 1 is replaced by the following:

#### *"Article 1 Subject matter*

"This Regulation establishes a multi-annual plan for the fisheries exploiting the stock of herring in the West of Scotland."

- (2) [In Article 2 the following point (e) is added:

"(e) "stock of herring in the West of Scotland" means the stock of herring (*clupea harengus*) which inhabits Union and international waters of ICES divisions Vb, VIa and VIb."

- (3) Article 7 is replaced by the following:

#### *"Article 7*

##### *Revision of maximum fishing mortality rates and associated spawning stock biomass levels*

Where scientific data indicates that the values for the fishing mortality rates and associated spawning stock biomass levels specified in Article 3(2), Article 4(2) to 4(5) and Article 9 are no longer appropriate to reach the objective set forth in Article 3(1), the Commission shall fix new values for such rates and levels by means of delegated acts in accordance with Article 9a."

- (4) Article 8 is replaced by the following:

*"Article 8*

*Evaluation and review of the multi-annual plan*

"Every four years from 18 December 2008, the Commission shall evaluate the operation and performance of the multi-annual plan. Where appropriate, the Commission may propose adaptations to the multi-annual plan or adopt delegated acts in accordance with Article 7."

(5) The following Article 9a is inserted:

*"Article 9a*

*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 7 and 8 shall be conferred for an indeterminate period of time from [dd/mm/yyyy] [insert date of entry into force of this regulation].

3. The delegation of power referred to in Articles 7 and 8 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 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 7 and 8 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 2*

This Regulation shall enter into force on the twentieth 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*