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*Committee on Fisheries*

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**2012/0013(COD)**

21.12.2012

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## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks  
(COM(2012)0021 – C7-0042/2012 – 2012/0013(COD))

Committee on Fisheries

Rapporteur: Diane Dodds

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks (COM(2012)0021 – C7-0042/2012 – 2012/0013(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0021),
  - having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0042/2012),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Fisheries (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation**

##### **Recital 1**

*Text proposed by the Commission*

(1) Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No 423/2004 empowers the Council to monitor and revise the maximum fishing mortality rates and

*Amendment*

(1) Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No 423/2004 empowers the Council to monitor and revise the maximum fishing mortality rates and **the**

associated spawning stock biomass levels.

associated spawning stock biomass levels  
*specified therein.*

Or. en

*Justification*

*Regulation (EC) No 1342/2008 empowers the Council to monitor maximum fishing mortality rates and associated spawning stock biomass levels specified only in that Regulation.*

**Amendment 2**

**Proposal for a regulation**

**Recital 2**

*Text proposed by the Commission*

*Amendment*

**(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.**

**deleted**

Or. en

*Justification*

*This recital is redundant.*

**Amendment 3**

**Proposal for a regulation**

**Recital 3 – introductory part**

*Text proposed by the Commission*

*Amendment*

(3) In order to amend or supplement non-essential elements of the provisions of Regulation (EC) No 1342/2008, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of the following:

(3) In order to amend or supplement non-essential elements of the provisions of Regulation (EC) No 1342/2008 **and in order to ensure a rapid reaction to changes in stock conditions**, the power to adopt acts, in accordance with Article 290 of the Treaty, **following consultation with regional stakeholders and the STECF**,

should be delegated to the Commission in respect of the following:

Or. en

#### **Amendment 4**

##### **Proposal for a regulation**

##### **Recital 5**

*Text proposed by the Commission*

*Amendment*

***(5) In accordance with Article 291 of the Treaty, in order to implement legally binding acts in uniform conditions, implementing acts are to confer implementing powers on the Commission.***

*deleted*

Or. en

*Justification*

*This recital is redundant.*

#### **Amendment 5**

##### **Proposal for a regulation**

##### **Recital 7**

*Text proposed by the Commission*

*Amendment*

***(7) The decision-making procedure set out in Article 30 should be clarified following the entry into force of the Treaty on the Functioning of the European Union.***

*deleted*

Or. en

*Justification*

*This recital does not seem necessary and clarification should be simply made as it is self-explanatory.*

## Amendment 6

### Proposal for a regulation

#### Article 1 - point -1 (new)

Regulation (EC) No 1342/2008

Article 8 - paragraph 6

*Text proposed by the Commission*

*Amendment*

6. Where the cod stock referred to in paragraph 1 has been exploited at a fishing mortality rate close to 0,4 during three successive years, the Commission shall evaluate the application of this Article **and, where appropriate, propose relevant measures to amend it** in order to ensure exploitation at maximum sustainable yield.

***(-1) In Article 8, point 6 is replaced by the following:***

"6. Where the cod stock referred to in paragraph 1 has been exploited at a fishing mortality rate close to 0,4 during three successive years, the Commission shall evaluate the application of this Article. ***Where necessary, the Commission shall make appropriate proposals, for adoption in accordance with the ordinary legislative procedure, for the amendment of the long-term plan,*** in order to ensure exploitation at maximum sustainable yield."

Or. en

### *Justification*

*It should be explicitly stated that any amendment to the multi-annual plan, apart from the exceptions specified in this regulation, would have to be adopted via the ordinary legislative procedure. Delegated acts are limited as to their scope to the modification of fishing mortality rates and spawning stock biomass levels and may be adopted only if the conditions specified in a relevant Article of this Regulation are fulfilled.*

## Amendment 7

### Proposal for a regulation

#### Article 1 – point 1

Regulation (EC) No 1342/2008

Article 10 - paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The Commission shall ***be empowered to*** adopt delegated acts in accordance with Article 31a ***concerning the changes to the***

1. The Commission shall adopt delegated acts, in accordance with Article 31a, ***fixing new*** values set out in ***Article 5(2), Article 6***



values *for the levels* set out in *Articles* 5(2), 6 and 7(2), when the target fishing mortality rate in Article 5(2) has been reached or where scientific data *indicate* that this target, or the minimum and precautionary spawning biomass levels established in Article 6, or the levels of fishing mortality rates given in Article 7(2), are no longer appropriate in order to maintain a low risk of stock depletion and a maximum sustainable yield.

and *Article* 7(2), when the target fishing mortality rate in Article 5(2) has been reached or where *the Commission, on the basis of advice from STECF and, where appropriate, other* scientific data *and after consulting fully with the relevant Regional Advisory Council, finds* that this target, or the minimum and precautionary spawning biomass levels established in Article 6, or the levels of fishing mortality rates given in Article 7(2), are no longer appropriate in order to maintain a low risk of stock depletion and a maximum sustainable yield.

Or. en

#### *Justification*

*The Commission should be obliged to use scientific data from the STECF and to consult the relevant Regional Advisory Council before taking any decision on adopting delegated acts fixing new values for fishing mortality rates and spawning stock biomass levels.*

#### **Amendment 8**

##### **Proposal for a regulation**

##### **Article 1 – point 2**

Regulation (EC) No 1342/2008

Article 11 – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall provide annually appropriate information to the Commission to establish that the above conditions are and remain fulfilled.

#### *Amendment*

3. Member States shall provide annually appropriate information to the Commission *and STEFC* to establish that the above conditions are and remain fulfilled.

Or. en

#### *Justification*

*The STECF should also directly receive the information annually provided by the Member States.*

## Amendment 9

### Proposal for a regulation

#### Article 1 – point 2

Regulation (EC) No 1342/2008

Article 11 – paragraph 4

#### *Text proposed by the Commission*

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 31a **to lay** down rules concerning the adjustment of the fishing effort where a group of vessels is excluded from or re-included in the effort regime pursuant to Article 11(2) and where a vessel no longer complies with the requirements specified in the decision on exclusion.

#### *Amendment*

4. The Commission shall be empowered to adopt, **after consulting STECF**, delegated acts in accordance with Article 31a, **laying** down rules concerning the adjustment of the fishing effort where a group of vessels is excluded from or re-included in the effort regime pursuant to Article 11(2) and where a vessel no longer complies with the requirements specified in the decision on exclusion.

Or. en

#### *Justification*

*The STECF should be mandatorily consulted in the process of decision making regarding adjustment of the fishing effort in this case.*

## Amendment 10

### Proposal for a regulation

#### Article 1 – point 3 (new)

Regulation (EC) No 1342/2008

Article 13 – paragraph 7

#### *Text proposed by the Commission*

7. The Commission shall request STEFC to compare annually the reduction in cod mortality which would result from the application of point (c) of paragraph 2 with the reduction it would have expected to occur as a result of the effort adjustment referred to in Article 12(4). In light of this advice the Commission **may propose**

#### *Amendment*

**(3) In Article 13, point 7 is replaced by the following:**

'7. The Commission shall request STEFC to compare annually the reduction in cod mortality which would result from the application of point (c) of paragraph 2 with the reduction it would have expected to occur as a result of the effort adjustment referred to in Article 12(4). In light of this advice, the Commission **shall, where**

*adjustments* in effort that may be applied for the relevant gear grouping the following year.

*necessary, make appropriate proposals for the adjustment, in accordance with the Article 43(3) of the Treaty, to the fishing effort that may be applied for the relevant gear grouping the following year.'*

Or. en

*Justification*

*It should be explicitly stated that amendments to the fishing effort would have to be adopted in accordance with Article 43(3) of the Treaty.*

**Amendment 11**

**Proposal for a regulation**

**Article 1 – point 7**

Regulation (EC) No 1342/2008

Article 30

*Text proposed by the Commission*

*Amendment*

**(7) Article 30 is replaced by the following:** *deleted*

*'Article 30*

***Decision-making procedure***

***Where this Regulation provides for decisions to be taken by the Council, the Council shall act in accordance with the Treaty.'***

Or. en

*Justification*

*Only the Treaty can provide for the procedures of the adoption of legal acts, therefore this Article is superfluous.*

## Amendment 12

### Proposal for a regulation

#### Article 1 – point 9

Regulation (EC) No 1342/2008

Article 31a – paragraph 2

#### *Text proposed by the Commission*

2. The delegation of power referred to in **Articles** 10(1), 11(4), 14(a)(1), 16(5), 17(7) and 31 shall be conferred for **an indeterminate** period of **time**.

#### *Amendment*

2. The delegation of power referred to in **Article** 10(1), **Article** 11(4), **Article** 14(a)(1), **Article** 16(5), **Article** 17(7) and **Article** 31 shall be conferred **on the Commission** for a period of **three years from ...\***. **The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the three-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.**

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**\* OJ: Please insert the date of entry into force of this Regulation.**

Or. en

#### *Justification*

*It seems more appropriate to limit the delegation in time and to oblige the Commission to report on its exercise in order to have a regular evaluation and questioning of the use of the delegation.*

## Amendment 13

### Proposal for a regulation

#### Article 1 – point 9

Regulation (EC) No 1342/2008

Article 31a – paragraph 3

#### *Text proposed by the Commission*

3. The delegation of powers referred to in

#### *Amendment*

3. The delegation of powers referred to in

Articles 10(1), 11(4), 14(a)(1), 16(5), 17(7) and 31 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.

Articles 10(1), 11(4), 14(a)(1), 16(5), 17(7) and 31 may be revoked at any time by the European Parliament or by the Council. A decision *to revoke* 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.

Or. en

## Amendment 14

### Proposal for a regulation

#### Article 1 – point 9

Regulation (EC) No 1342/2008

Article 31a – paragraph 5

#### *Text proposed by the Commission*

5. A delegated act adopted pursuant to in *Articles* 10(1), 11(4), 14(a)(1), 16(5), 17(7) and 31 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.

#### *Amendment*

5. A delegated act adopted pursuant to in *Article* 10(1), *Article* 11(4), *Article* 14(a)(1), *Article* 16(5), *Article* 17(7) and *Article* 31 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **two** 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 **two** months at the initiative of the European Parliament or *of* the Council.

Or. en

## Amendment 15

### Proposal for a regulation

#### Article 1 - point 11 (new)

Regulation (EC) No 1342/2008

Article 34

*Text proposed by the Commission*

*Amendment*

The Commission shall, on the basis of advice from STECF and after consultation of the relevant Regional Advisory Council, evaluate the impact of the management measures on the cod stocks concerned and the fisheries on those stocks, at the latest in the third year of application of this Regulation and then each third successive year of application of this Regulation **and, where appropriate, propose relevant measures to amend it.**

***(11) Article 34 is replaced by the following:***

***1. The Commission shall, on the basis of advice from STECF and after consultation of the relevant Regional Advisory Council, evaluate the impact of the management measures on the cod stocks concerned and the fisheries on those stocks, at the latest in the third year of application of this Regulation and then each third successive year of application of this Regulation. Where necessary, the Commission shall make appropriate proposals, for adoption in accordance with the ordinary legislative procedure, for the amendment of the long-term plan.***

***2. Paragraph 1 shall be without prejudice to the delegation of powers provided for in this Regulation.***

Or. en

*Justification*

*It should be explicitly stated that any amendment to the multi-annual plan, apart from the exception specified in this regulation, would have to be adopted via the ordinary legislative procedure. Delegated acts are limited as to their scope to the modification of fishing mortality rates and spawning stock biomass levels and may be adopted only if the conditions specified in Article 10 are fulfilled.*

## EXPLANATORY STATEMENT

### General background

The Treaty of Lisbon has introduced a new hierarchy of norms comprising three levels:

- At the first level are the legislative acts which are adopted by the legislators (the European Parliament and the Council) in accordance with the ordinary legislative procedure, where the EP and the Council decide as equal co-legislators (see Article 294 of the Treaty on the Functioning of the European Union - *TFUE*), or in accordance with special legislative procedures;
- Furthermore, the legislators may delegate to the Commission the power to adopt non-legislative acts of general application to supplement and amend certain non-essential elements of the legislative act (so called delegated acts, defined in Article 290 (1) of the TFUE), which form a certain level of norms;
- Legally binding Union acts may also confer implementing powers on the Commission where uniform conditions for implementing these Union acts are needed. On that basis the Commission adopts so-called implementing acts (see Article 291 of the TFUE), constituting the third level.

The choice of which type of act to use is not always clear cut. Delegated acts and implementing acts, compared to legislative acts, have the advantage of providing the possibility to react swiftly to a new situation. It is the ordinary legislative procedure and delegated acts that guarantee the participation of the Parliament in the decision making process on an equal footing with the Council.

### The Commission proposal

Council Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks and repealing Regulation (EC) No 423/2004 (the *Plan*), having been adopted before the entry into force of the TFEU, contains some provisions, namely Articles 10 and 11, which confer decision-making powers on the Council while this is not possible any longer under the TFEU.

The Commission has thus suggested aligning the Regulation to the new treaty framework by replacing the current Council decisions:

#### 1) by delegated acts

- to adapt fishing mortality rates and associated spawning stock biomass levels to scientific findings,
- to adjust the fishing effort where a group of vessels is excluded from or re-included in the effort regime,
- to specify the rules concerning the method for calculating fishing capacity and adjusting the maximum capacity levels, and

- to lay down rules concerning the calculation method enabling Member States to adapt the maximum allowable fishing effort in relation to quota management and following transfer of effort across effort groups.

2) by legislative acts adopted according to the ordinary legislative procedure in order to make other changes to plan.

#### The rapporteur's view

As this Regulation is one of the first acts in the fisheries sector to be aligned to the TFEU, it is of particular importance to find legally well founded solution safeguarding Parliament's rights created by the Treaty of Lisbon. Also, solutions adopted for this regulation may have an influence on the decision-making procedure that will be applicable to other multi-annual plans.

The rapporteur globally agrees with the Commission's proposal to the extent that it suggests the use of:

- 1) delegated acts to adapt fishing mortality rates and associated spawning stock biomass levels to scientific findings,
  - to adjust the fishing effort where a group of vessels is excluded form or re-included in the effort regime,
  - to specify the rules concerning the method for calculating fishing capacity and adjusting the maximum capacity levels, and
  - to lay down rules concerning the calculation method enabling Member States to adapt the maximum allowable fishing effort in relation to quota management and following transfer of effort across effort groups

2) the ordinary legislative procedure to make other changes to the Plan.

Therefore the rapporteur suggests some amendments to the Commission's proposal:

#### 1) Delegated acts

Stricter definition of the circumstances under which the Commission may adopt delegated acts, as well as to distinguish this case from other changes that may be made to the Plan.

#### 2) Ordinary legislative procedure

It is important to insert an explicit reference to the ordinary legislative procedure, stating that this procedure has to be used in order to modify any part of the Plan apart from the specifically provided cases creates legal certainty.

#### 3) Role of STEFC and RACs.