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2012/0162 (COD)

Proposal for a

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

**amending Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing**

## 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 the context of the alignment of Regulation (EC) No 1005/2008 to the new rules of the TFEU, powers currently defined by that Regulation have been re-classified into delegated and implementing powers.

Following this exercise, a draft proposal for amendment of Regulation (EC) No 1005/2008 has been prepared.

Pursuant to Article 290 of the Treaty, the Legislator gives the Commission the task to complete or modify certain non-essential elements of that Regulation. The Commission should be empowered to adopt delegated acts to grant exemption from notification of information by fishing vessels or to establish different notification periods, to determine benchmarks for inspections of landing and transshipment operations by third country fishing vessels, to adapt the catch certification scheme for some fishery products obtained by small fishing vessels, including the possibility of using a simplified catch certificate, to amend the list of products not included in the scope of the Regulation, to adapt the catch certificate submission deadline to the type of fishery product, the distance to the place of entry or the transport means used, to establish rules for the granting, amendment or withdrawal of approved economic operators' certificates or for the suspension or revocation of the status of approved economic operator and on the conditions of validity of approved economic operators' certificates, and to establish Union criteria for verifications in the context of risk management.

Pursuant to Article 291 of the Treaty, the Legislator confers implementing powers to the Commission to ensure uniform conditions for the implementation of Regulation (EC) No 1005/2008, specifically: the establishment of prior notification forms, the establishment of landing and transshipment declaration procedures and forms, the adoption, in agreement with flag States, of catch certificates established, validated or submitted by electronic means or based on electronic traceability systems ensuring the same level of control by authorities, the determination and modification of the list of catch certification schemes adopted by regional fisheries management organisations complying with the EU IUU Regulation, the establishment of common conditions in all Member States for procedures and forms on the application for and issuing of approved economic operators' certificates, of rules on verifications of approved economic operator and of rules on the exchange of information between the approved economic operator and the authorities in the Member States, between the Member States and between Member States and the Commission, the establishment of the Union IUU vessel list, the removal of vessels from the Union IUU vessel list, the inclusion of

IUU vessel lists adopted by regional fisheries management organisations in the Union IUU vessel list, the identification of non-cooperating third countries, the inclusion of identified third countries on a list of non cooperating third countries, the removal of third countries from the list of non-cooperating third countries, the adoption of emergency measures towards third countries in specific circumstances, the establishment of the format for submission by Member States of the information regarding sighted fishing vessels and the establishment of rules on mutual assistance.

## **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**

Identify the powers conferred upon the Commission in Council Regulation (EC) No 1005/2008 and classify these as delegated or implementing powers 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 1005/2008, 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.

## **4. BUDGETARY IMPLICATION**

This measure does not involve any additional Union expenditure.

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

**amending Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing**

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,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 1005/2008<sup>1</sup> of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing confers powers upon the Commission in order to implement some of the provisions of that Regulation and reserves certain implementing powers to the Council.
- (2) As a consequence of the entry into force of the Lisbon Treaty, certain powers conferred under Regulation (EC) No 1005/2008 need to be aligned with Articles 290 and 291 of the Treaty on the Functioning of the European Union.
- (3) In order to apply some of the provisions of Regulation (EC) No 1005/2008, 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 the following:
  - the exemption from certain information requirements imposed on fishing vessels or the establishment of different notification periods for certain categories of fishing vessels,

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<sup>1</sup> OJ L 286, 29.10.2008

- the establishment of benchmarks for inspections of landing and transshipment operations by third country fishing vessels,
  - the establishment of the list of products excluded from the scope of implementation of the catch certificate,
  - the adaptation of the catch certification scheme for some fishery products obtained by small fishing vessels, including the possibility of using a simplified catch certificate,
  - the adaptation of the deadline for submitting the catch certificate, on the basis of the type of fishery product, the distance to the place of entry into the territory of the Union or the transport means used,
  - the establishment of rules for the granting, amendment or withdrawal of approved economic operators' certificates or for the suspension or revocation of the status of approved economic operator and on the conditions of validity of approved economic operators' certificates, and
  - the establishment of Union criteria for verifications in the context of risk management.
- (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. 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.
- (5) In order to ensure uniform conditions for the implementation of Council Regulation (EC) No 1005/2008 implementing powers should be conferred upon the Commission in accordance with Article 291 of the Treaty on the Functioning of the European Union in respect of the following:
- the establishment of prior notification forms,
  - the establishment of landing and transshipment declaration procedures and forms,
  - the adoption, in agreement with flag States, of catch certificates established, validated or submitted by electronic means or based on electronic traceability systems ensuring the same level of control by authorities,
  - the determination and modification of the list of catch certification schemes adopted by regional fisheries management organisations complying with the EU IUU Regulation,
  - the establishment of common conditions in all Member States for procedures and forms on the application for and issuing of approved economic operators' certificates, of rules on verifications of approved economic operator and of rules on the exchange of information between the approved economic operator and the authorities in the Member States, between the Member States and between Member States and the Commission,

- the establishment of the Union IUU vessel list,
- the removal of vessels from the Union IUU vessel list,
- the inclusion of IUU vessel lists adopted by regional fisheries management organisations in the Union IUU vessel list,
- the identification of non-cooperating third countries,
- the inclusion of identified third countries on a list of non cooperating third countries,
- the removal of third countries from the list of non-cooperating third countries,
- the adoption of emergency measures towards third countries in specific circumstances,
- the determination of the format for submission by Member States of the information regarding sighted fishing vessels, and
- the establishment of rules on mutual assistance.

Where the control of Member States is required those powers should be exercised in accordance with Regulation (EU) No 182/2011<sup>2</sup> 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.

- (6) As a consequence of the entry into force of the Lisbon Treaty, Article 52 needs to be deleted. This Article was already used for the establishment of the legal framework for the simplified catch certificate and for the establishment of administrative arrangements with third countries under Article 12(4) and 20(4). It is still needed to provide the necessary powers to the Commission to adopt delegated acts for the adaptation of the catch certification scheme for some fishery products obtained by small fishing vessels, including the possibility of using a simplified catch certificate and implementing powers for the adoption by the Commission, in agreement with flag States, of catch certificates that are established, validated and submitted by electronic means or replaced by electronic traceability systems ensuring the same level of control by authorities.
- (7) As a consequence of the entry into force of the Lisbon Treaty, the provision on temporary measures which provides for the referral of certain Commission measures to the Council under certain conditions needs to be adapted.
- (8) The provisions of Regulation (EC) No 1005/2008 concerning the establishment of a list of non-cooperating third countries and the removal of third countries from that list confer decision-making powers upon Council. As a consequence of the entry into

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<sup>2</sup> OJ L 55, 28.2.2011, p.13

force of the Lisbon Treaty those provisions need to be brought into line with the new procedures applicable to the common fisheries policy.

(9) Regulation (EC) No 1005/2008 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 1005/2008 is amended as follows:

1. Article 6 is amended as follows:

a) the following paragraph 1a is added

"1a) The Commission may establish the form for prior notification referred to in paragraph 1 above by means of implementing acts in accordance with the examination procedure referred to in Article 54(2).

b) paragraph 3 is replaced by the following:

"3. The Commission shall be empowered, in accordance with Article 54a, to adopt delegated acts exempting certain categories of third country fishing vessels from the obligation stipulated in paragraph 1 for a limited and renewable period, or making provision for another notification period taking into account, inter alia, the type of fishery product, the distance between the fishing grounds, landing places and ports where the vessels in question are registered or listed.

2. in Article 8, paragraph 3 is replaced by the following:

"3. Landing and transshipment declaration procedures and forms shall be determined by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2)".

3. in Article 9 paragraph 1 is replaced by the following:

"1. Member States shall carry out inspections in their designated ports of at least 5 % of landing and transshipment operations by third country fishing vessels each year, in accordance with the benchmarks determined on the basis of risk management, without prejudice to the higher thresholds adopted by regional fisheries management organisations. The Commission shall be empowered, in accordance with Article 54a, to adopt delegated acts determining those benchmarks."

4. Article 12 is amended as follows:

a) Paragraph 4a is added:

"4a The Commission shall, by means of implementing acts, adopt the catch certificates established in the framework of the cooperation set out in Article 20(4). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

b) paragraph 5 is replaced by the following:

"5. The list in Annex I of the products excluded from the scope of implementation of the catch certificate may be reviewed each year. The Commission shall be empowered, in accordance with Article 54a, to adopt delegated acts amending the list on the basis of:

- (a) the inspections of third country fishing vessels in Member States ports;
- (b) the implementation of catch certification scheme for importation and exportation of fishery products;
- (c) the implementation of the Union alert system;
- (d) the identification of fishing vessels engaged in IUU fishing;
- (e) the identification of nationals supporting or engaged in IUU fishing;
- (f) the implementation of provisions adopted within certain regional fisheries management organisations pertaining to fishing vessels sightings;
- (g) the reports from Member States."

c) the following paragraph 6 is added:

"6. The Commission shall be empowered, in accordance with Article 54a, to adopt delegated acts adapting the catch certification scheme to fishery products obtained by small fishing vessels including, if necessary, a specimen for simplified catch certificate."

5. in Article 13, paragraph 1 is replaced by the following:

1. Catch documents, and any related documents, validated in conformity with catch documentation schemes adopted by a regional fisheries management organisation which are recognised as complying with the requirements laid down in this Regulation, shall be accepted as catch certificates in respect of the fishery products from species to which such catch documentation schemes apply and shall be subject to the check and verification requirements incumbent upon the Member State of importation in accordance with Articles 16 and 17 and to the provisions on refusal of importation laid down in Article 18. The list of such catch documentation schemes shall be determined by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2).

6. Article 16 is amended as follows:

a) paragraph 1 is replaced by the following:

"1. The validated catch certificate shall be submitted by the importer to the competent authorities of the Member State in which the product is intended to be imported within a deadline initially set at least three working days before the estimated time of arrival at the place of entry into the territory of the Union. Such

deadline of three working days may be adapted, by means of delegated acts adopted in accordance with Article 54a, according to the type of fishery product, the distance to the place of entry into the territory of the Union or the transport means used. Those competent authorities shall, on the basis of risk management, check the catch certificate in the light of the information provided in the notification received from the flag State in accordance with Articles 20 and 22."

b) paragraph 3 is replaced by the following:

"3. The criteria for granting the status of approved economic operator to an importer by the competent authorities of a Member State shall include:

- (a) the establishment of the importer on the territory of that Member State;
- (b) a sufficient number and volume of import operations to justify the implementation of the procedure referred to in paragraph 2;
- (c) an appropriate record of compliance with the requirements of conservation and management measures;
- (d) a satisfactory system of managing commercial and, where appropriate, transport and processing records, which enables the appropriate checks and verifications to be carried out for the purposes of this Regulation;
- (e) the existence of facilities with regard to the conduct of those checks and verifications;
- (f) where appropriate, practical standards of competence or professional qualifications directly related to the activities carried out; and
- (g) where appropriate, proven financial solvency.

Member States shall communicate to the Commission the name and address of the approved economic operators as soon as possible after having granted this status. The Commission shall make available this information to the Member States by electronic means."

c) the following paragraphs 4 and 5 are added:

"4. On the basis of the criteria set out in paragraph 3, the Commission shall be empowered, in accordance with Article 54a, to adopt delegated acts establishing:

- (a) rules on the suspension or revocation of the status of approved economic operator,
- (b) rules on the conditions of validity of approved economic operators' certificates,
- (c) rules on the granting, amendment or withdrawal of approved economic operators' certificates.

5. The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 54(2) concerning:

- (a) procedures and forms on the application for and issuing of approved economic operators' certificates,
- (b) rules on how to carry out verifications of approved economic operators,
- (c) rules on the exchange of information between the approved economic operator and the authorities in the Member States, between the Member States and between Member States and the Commission."

7. in Article 17, paragraph 3 is replaced by the following:

"3. Verifications shall be focused towards risk identified on the basis of criteria developed at national or Union level under risk management. Member States shall notify to the Commission their national criteria within 30 working days after 29 October 2008 and update this information. The Commission shall be empowered, in accordance with Article 54a, to adopt delegated acts determining the Union criteria to allow timely risk analyses and global assessment of relevant control information.

8. in Article 27, paragraph 1 is replaced by the following:

"1. The Commission shall establish a Union IUU vessel list by means of implementing acts adopted in accordance with the examination procedure referred to in Article 54(2). The list shall include the fishing vessels in relation to which, further to the measures taken pursuant to Articles 25 and 26 and on the basis of the criteria contained in the same provisions, the information obtained in accordance with this Regulation establishes that they are engaged in IUU fishing as referred to in Article 3 and whose flag States have not complied with the official requests referred to in Article 26(2)(b) and (c) and Article 26(3)(b) and (c), in response to such IUU fishing."

9. in Article 28, paragraph 1 is replaced by the following:

"1. The Commission shall remove a fishing vessel from the Union IUU vessel list, by means of implementing acts adopted in accordance with the examination procedure referred to in Article 54(2), if the fishing vessel's flag State demonstrates that:

- (a) the vessel did not engage in any of the IUU fishing activities for which it was placed on the list; or
- (b) proportionate, dissuasive and effective sanctions have been applied in response to the IUU fishing activities in question, notably for the fishing vessels flying the flag of a Member State in accordance with Regulation (EC) No 1224/2009"

10. in Article 30, paragraph 1 is replaced by the following:

"1. In addition to the fishing vessels referred to in Article 27, fishing vessels included in the IUU vessel lists adopted by regional fisheries management organisations shall be included in the Union IUU vessel list by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2). Removal of such vessels from the Union IUU vessel list

shall be governed by the decisions taken with regard to them by the relevant regional fisheries management organisation."

11. in Article 31, paragraph 1 is replaced by the following:

"1. The Commission shall, by means of implementing acts, identify the third countries that it considers as non-cooperating third countries in fighting IUU fishing on the basis of the criteria listed in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2)."

12. in Article 33, paragraph 1 is replaced by the following:

"1. The Commission shall, by means of implementing acts, include the third countries identified in accordance with Article 31(1) on a list of non cooperating third countries. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2)."

13. in Article 34, paragraph 1 is replaced by the following:

"1. The Commission shall, by means of implementing acts, remove a third country from the list of non-cooperating third countries if the third country concerned demonstrates that the situation that warranted its listing has been rectified. A removal decision shall also take into consideration whether the identified third countries concerned have taken concrete measures capable of achieving a lasting improvement of the situation. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2)."

14. Article 36 is replaced by the following

#### "Article 36

##### Temporary measures

1. If there is evidence that the measures adopted by a third country undermine the conservation and management measures adopted by a regional fisheries management organisation, the Commission may establish, by means of implementing acts and in line with its international obligations, temporary measures lasting no more than six months to alleviate the effects of such third country measures. The Commission may take a new decision to extend those temporary measures for no more than six months.

2. The temporary measures referred to in paragraph 1 may provide that:

- (a) fishing vessels authorised to fish and flying the flag of the third country concerned shall not be granted access to the ports of Member States, except in case of force majeure or distress as referred to in Article 4(2) for services strictly necessary to remedy those situations;
- (b) fishing vessels flying the flag of a Member State shall not be authorised to engage in joint fishing operations with vessels flying the flag of the third country concerned;

- (c) fishing vessels flying the flag of a Member State shall not be authorised to fish in maritime waters under the jurisdiction of the third country concerned, without prejudice to the provisions set out in bilateral fishing agreements;
- (d) provision of live fish for fish farming in maritime waters under the jurisdiction of the third country concerned shall not be authorised;
- (e) live fish caught by fishing vessels flying the flag of the third country concerned shall not be accepted for the purposes of fish farming in maritime waters under the jurisdiction of a Member State.

3. Temporary measures shall have immediate effect. They shall be notified to the Member States and to the third country concerned and published in the Official Journal of the European Union."

15. in Article 49, paragraph 1 is replaced by the following:

"1. Member States which obtain suitably documented information regarding sighted fishing vessels shall transmit this information without delay to the Commission or to the body designated by it with the format determined by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 54(2)."

16. in Article 51, paragraph 3 is replaced by the following:

"3. The Commission shall be empowered to adopt, by means of implementing acts, rules on mutual assistance concerning:

- (a) administrative cooperation between Member States, third countries, the Commission and the body designated by it, including protection of personal data and use of information and protection of professional and commercial secrecy,
- (b) costs of executing a requests for assistance,
- (c) designation of Member States' single authority,
- (d) communication of follow-up measures taken by national authorities further to exchange of information,
- (e) request for assistance, including requests for information, requests for measures and requests for administrative notifications and establishing deadlines for replies,
- (f) information without prior request and
- (g) Member States' relations with the Commission and with thrid countries.

Those implementing acts shall be adopted in accordance with the the examination procedure referred to in Article 54(2)."

17. Article 52 is deleted.

18. Article 54 is replaced by the following:

*"Article 54  
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."

19. the following Article 54a is inserted:

"Article 54a

**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 Articles 6(3), 9(1), 12(5), 12(6), 16(1), 16(4) and 17(3) shall be conferred for an indeterminate period of time.

3. The delegation of powers referred to in Articles 6(3), 9(1), 12(5), 12(6), 16(1), 16(4) and 17(3) 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 Articles 6(3), 9(1), 12(5), 12(6), 16(1), 16(4) and 17(3) 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*