



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 January 2013

5268/13

PECHE 13

NOTE

from: General Secretariat of the Council

to: Delegations

No. Cion prop.: 13745/12 PECHE 343 CODEC 2130 - COM(2012) 498 final

Subject: 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

Delegations will please find attached a Commission statement to go in the minutes of the December 2012 Agriculture and Fisheries Council agenda under item 9 which adopted the cod splitting proposal under Article 43(3).

**COMMISSION STATEMENT
FOR THE MINUTES OF THE COUNCIL**

Subject: 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) 498 final 2012/0236 (COD)

The Commission considers that Regulation 1342/2008 (the Cod Plan) which was adopted as a legislative act under the former Treaty (EC Treaty), must be amended by way of the now existing ordinary legislative procedure under TFEU.

For these reasons, the Commission considers that Articles 8, 9 and 12 of the Cod Plan cannot be amended by the Council on the basis of the non-legislative procedure of Article 43(3) TFEU. Furthermore, the material content of Articles 8, 9 and 12 of the Cod Plan cannot be construed as being covered by the terms "measures on the fixing and allocation of fishing opportunities".

The Presidency's proposal to split the Commission's proposal and adopt under article 43(3) TFEU the amendment to Articles 8, 9 and 12 of the Cod Plan would be in breach of the Treaty. In these circumstances, the Commission maintains its original proposal including the legal basis of Article 43(2) TFEU, and reserves the right to avail itself of the legal remedies provided by the Treaty to contest the Council's amendment to the Cod Plan.