



**COUNCIL OF
THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

Subject: Proposal for a Regulation by the European Parliament and the Council on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement Area
- Statement of the Council's reasons
Adopted by the Council on 20 October 2011

I. INTRODUCTION

1. On 16 September 2009, the Commission submitted this proposal to the Council. Following the entry into force of the Lisbon Treaty, the proposal is subject to Article 43(2) of the TFEU and the ordinary legislative procedure applies.
2. The Economic and Social Committee gave its opinion on 17 March 2011.
3. The European Parliament adopted its position at first reading on 10 March 2011.
4. The Council adopted its position in first reading on 20 October 2011.

II. OBJECTIVE

4. Recommendations adopted by the GFCM are binding on its Contracting Parties. The European Union is a contracting party and the GFCM recommendations should therefore be transposed, where their content is not already covered by EU legislation, into EU legislation.
5. Until recently, recommendations adopted by GFCM have been transposed into EU legislation on a temporary basis through the annual regulations on fishing opportunities (TACs and quota)¹. However, the permanent character of such recommendations would also require a more permanent legal instrument for their transposition into EU legislation; it seems therefore appropriate to transpose these recommendations via a single legislative act, where future recommendations can be added by way of amendments to that act. This will also improve legal certainty and constitute an important step towards simplification.
6. The content and obligations of the recommendations adopted by GFCM are often entirely or partly covered by EU legislation adopted previously and therefore only those aspects which differ from the EU legislation in question need to be transposed, as well as the relevant reporting obligations, where appropriate.

¹ Reg. 43/2009, Reg. 40/2008, Reg. 41/2007 and Reg. 51/2006

7. Since GFCM recommendations apply to the entire GFCM agreement area which covers the Mediterranean, the Black Sea and connecting waters as referred to in Annex II to Council Decision 1998/416/EC of 16 June 1998², for reasons of clarity of EU legislation they should be transposed in a regulation separate from Regulation (EC) no. 1967/2006 which only covers the Mediterranean Sea.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

General

8. The proposal was subject to three informal trilogues with the European Parliament on 11 May and 25 October 2010 and on 21 June 2011. Although an overall agreement on the text existed between the institutions following the two first trilogues, outstanding issues remained in relation to the scope of application of delegated acts and on the duration of delegation. Therefore, work has concentrated on finding an agreement on the outstanding issues in relation to delegated acts, leaving aside issues agreed in the two first trilogues which were subsequently set out in the position of the Parliament of 10 March 2011. Work thus progressed on the presumption of a tacit acceptance of the Parliament's amendments in its position except for the issues relating to delegation of powers, and subject to later finalisation by the legal-linguistic services of the two institutions.
9. More concretely this means that the following EP amendments were deemed to become included in the Council's position at first reading: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 40, 45, 46, 47, 48, 49, 50, 51 and 52.
10. Amendments 42, 43 and 44 relating to delegation were not accepted.

² OJ L 190, 4.7.1998, p. 34

Delegated powers

11. On the horizontal issue of delegation of powers, the Commission and Member States were initially at opposite ends with Member States considering many aspects of the GFCM recommendations to be essential elements and therefore not suited for transposition into EU law by delegated acts. In the light of the fact that no solutions were found on these issues during the first two trilogues, the European Parliament adopted its position in the first reading on 10 March 2011 - a position which with regard to delegated acts could be described as a "half way house" between the Commission and Member States.
12. The European Parliament's move was seen as positive and in the right direction and helped the Hungarian Presidency to engage in new discussions with the various concerned delegations on their views regarding the elements of the transposition they considered to be essential elements. This allowed COREPER to agree on 1 June 2011 to grant the Hungarian Presidency a mandate to negotiate a solution on the outstanding issues at the third informal trilogue on 21 June 2011. An agreement was reached between all three institutions which reads as is set out in Article 26 in the Council's position (doc. 12607/11 PECHE 199 CODEC 1173).
13. In addition, it was agreed that (Article 27(1) ex-Article 28) "the power of referred to in Article 27 shall be conferred on the Commission for a period of *three years* from the date of entry into force of this Regulation" and (5) that " a delegated act adopted pursuant to Article 26 shall enter into force if no objections 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 [...]".

Implementing powers

14. The Commission specified during the third trilogue in respect of which concrete provisions of the Proposal adoption of implementing acts would be advisable, namely Articles 9 (information - report on fisheries activities) Article 12 (4) and (6) (on closed seasons), Article 14 (data collection), Article 15 (3) on minimum mesh size in the Black Sea), Article 23 (cooperation and information) and Article 24(4) (statistical matrices). No objections to this list were raised during the third informal trilogue and the draft Council position in first reading has been drawn up taking account of this list.

Other changes included in the Council's position at first reading

15. The text as finalised by the legal-linguistic experts has been aligned to take account of necessary changes due to the entry into force of the Lisbon treaty, standard formulations based on the new Comitology Regulation and on the Common Understanding on Delegated Acts. The recitals are aligned to the final contents of the legal provisions of the Proposal.
16. The Commission has indicated that it can accept the Council's position in the first reading.

IV. CONCLUSION

17. In adopting its position as set out in doc. 12607/11 PECHE 199 CODEC 1173, The Council hopes that the European Parliament can confirm the agreement reached among the institutions and thus enable an early adoption of the Regulation.