



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 2 February 2012

6041/12

**Interinstitutional File:
2012/0013 (COD)**

**PECHE 41
CODEC 259**

PROPOSAL

from:	European Commission
dated:	1 February 2012
No Cion doc.:	COM(2012) 21 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 find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: COM(2012) 21 final



EUROPEAN COMMISSION

Brussels, 31.1.2012
COM(2012) 21 final

2012/0013 (COD)

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**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Treaty on the Functioning of the European Union (TFEU) makes a distinction between powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act, as laid down in Article 290(1) TFEU (delegated acts), and powers conferred on the Commission to adopt uniform conditions for implementing legally binding Union acts, as laid down in Article 291(2) TFEU (implementing acts).

The objective of this proposal is to bring Regulation (EC) No 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks ('the cod plan') into line with the new rules of the TFEU. The powers currently conferred on the Commission by that Regulation have been re-classified into measures of a delegated nature and measures of an implementing nature.

The core objective of the plan is to ensure the sustainable exploitation of cod stocks in the geographical areas of the Kattegat, the North Sea, the West of Scotland and the Irish Sea on the basis of maximum sustainable yield (Article 5(1)). To attain that objective, the plan lays down rules for establishing the annual fishing opportunities for this stock in terms of total allowable catch and maximum allowable fishing effort. Such rules use certain technical parameters by reference to which the stock can be considered to be in a better or worse conservation status, therefore closer to or further away from the plan's objective. These parameters are science-based; they are 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 10(1) of the Regulation stipulates that if it appears in the light of scientific advice that the fishing mortality rates and associated spawning stock biomass levels used for the purposes of the plan are no longer appropriate, the Council must revise such parameters so as to ensure that the plan can attain its management objectives. The Regulation in force therefore confers the power to amend these non-essential elements of the plan on the Council. Such a decision-making procedure is no longer possible under the TFEU.

Similarly, the Commission should be empowered also to adopt delegated acts to amend other non-essential elements of Regulation (EC) No 1342/2008, such as certain technical parameters of Annex I, when the need arises and provided that the strict conditions laid down by that Regulation are fulfilled.

Delegated powers should also be given for setting rules on the adjustment of the fishing effort where a group of vessels is excluded from or re-included in the effort regime; on the method for calculating fishing capacity; on the calculation method for adapting the maximum allowable fishing effort; and on changes to the composition of the geographical areas and gear groupings.

Implementing powers should be given to the Commission to establish the procedure and format for transmitting information to the Commission, and the format of the special fishing permit and of the list of vessels holding a special permit.

In addition, the decision-making procedure set out in Article 30 should be clarified following the entry into force of the TFEU.

The proposed amendments are therefore changes that will enable the plan to work efficiently within the new decision-making framework set up by the Lisbon Treaty.

In line with the above a draft proposal for amending Regulation (EC) No 1342/2008 has been prepared and the Commission is asked to adopt this proposal as soon as possible, and to forward it to the Council and the European Parliament.

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENTS

There was no need for interested parties to be consulted or for an impact assessment to be carried out.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed action

The main thrust of the action is to identify the powers conferred on the Commission by Council Regulation (EC) No 1342/2008 and to classify them as delegated or implementing powers.

• Legal basis

Article 43(2) of the Treaty on the Functioning of the European Union.

• Subsidiarity principle

The proposal falls under the exclusive competence of the European Union.

• Proportionality principle

The proposal amends measures that already exist in Council Regulation (EC) No 1342/2008, so the question of the proportionality principle does not arise.

• Choice of instrument

Proposed instrument: a Regulation of the European Parliament and of the Council.

Other means would not be appropriate for the following reason: a Regulation must be amended by a Regulation.

4. BUDGETARY IMPLICATION

This measure does not involve any additional Union expenditure.

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

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 Committee¹,

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 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 423/2004² empowers the Council to monitor and revise the maximum fishing mortality rates and associated spawning stock biomass levels.
- (2) In accordance with Article 290 of the Treaty the Commission may be empowered to supplement or amend certain non-essential elements of a legislative act by means of delegated acts.
- (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:
 - changes to the established values for the maximum fishing mortality rates and associated spawning stock biomass levels, when the target fishing mortality rate has been reached;
 - the rules concerning the adjustment of the fishing effort where a group of vessels is excluded from or re-included in the effort regime;

¹

² OJ L 348, 24.12.2008, p. 20.

- the rules concerning the method for calculating the fishing capacity referred to in Article 14(3) and the adjustment of the maximum capacity levels due to permanent cessation of fishing activities and capacity transfers;
 - the rules concerning the calculation method for adapting the maximum allowable fishing effort in relation to quota management;
 - the rules concerning the calculation method for adapting the maximum allowable fishing effort following transfer of effort across effort groups;
 - changes to the composition of the geographical areas and gear groupings established in Annex I.
- (4) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission should, when preparing and drawing up delegated acts, ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (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.
- (6) In order to ensure uniform conditions for the implementation of Regulation (EC) No 1342/2008, implementing powers should be conferred on the Commission in respect of detailed rules on the procedure and format for transmitting the information required under this Regulation to the Commission, and the format of the special fishing permit and of the list of vessels holding such special permit. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 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 powers³.
- (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.
- (8) Regulation (EC) No 1342/2008 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1342/2008 is amended as follows:

- (1) Article 10(1) is replaced by the following:

‘1. The Commission shall be empowered to adopt delegated acts in accordance with Article 31a concerning the changes to the values for the levels set out in Articles

³ OJ L 55, 28.2.2011, p. 13.

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.’

(2) Article 11 is amended as follows:

(a) Paragraph 3 is replaced by the following:

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

(b) The following paragraphs 4 and 5 are added:

‘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.

5. Detailed rules on the procedure and format for transmitting to the Commission the information referred to in paragraph 11(3) may be adopted by the Commission by way of implementing acts in accordance with the procedure referred to in Article 32(2).’

(3) In Article 14 the following paragraph 5 is added:

‘5. Member States shall keep the Commission informed of the basis for calculating the maximum fishing capacity referred to in paragraph 3 and of any adjustments due to permanent cessation of fishing activities and capacity transfers pursuant to Article 16(3).’

(4) The following Article 14a is inserted:

‘Article 14a

Commission’s powers

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 31a in order to specify the rules concerning the method for calculating the fishing capacity referred to in Article 14(3) and adjusting the maximum capacity levels due to permanent cessation of fishing activities and capacity transfers pursuant to Article 16(3).

2. The Commission may adopt, by way of implementing acts in accordance with the procedure referred to in Article 32(2), detailed rules on the following:

(a) the format of the special fishing permit referred to in Article 14(2) and the procedures whereby the Member States make available the list of vessels holding that special permit as referred to in Article 14(4);

(b) the procedure and format for transmitting to the Commission the information referred to in Article 14(5).’

(5) In Article 16 the following paragraphs 4, 5 and 6 are inserted:

‘4. Member States shall keep the Commission informed of any adaptations of effort in accordance with this Article.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 31a to lay down rules concerning the calculation method enabling Member States to adapt the maximum allowable fishing effort in relation to quota management.

6. Detailed rules on the procedure and format for transmitting to the Commission the information referred to in paragraph 4 may be adopted by the Commission by way of implementing acts in accordance with the procedure referred to in Article 32(2).’

(6) In Article 17 the following paragraphs 6, 7 and 8 are inserted:

‘6. Member States shall keep the Commission informed of any adaptations of effort in accordance with this Article.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 31a to lay down rules concerning the calculation method enabling Member States to adapt the maximum allowable fishing effort following transfer of effort across effort groups.

8. Detailed rules on the procedure and format for transmitting to the Commission the information referred to in paragraph 6 may be adopted by the Commission by way of implementing acts in accordance with the procedure referred to in Article 32(2).’

(7) Article 30 is replaced by the following:

‘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.’

(8) In Article 31, the introductory phrase is replaced by the following:

‘The Commission shall be empowered to adopt delegated acts in accordance with Article 31a to amend Annex I to this Regulation on the basis of the following principles:’

(9) The following Article 31a is inserted:

‘Article 31a

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 Articles 10(1), 11(4), 14(a)(1), 16(5), 17(7) and 31 shall be conferred for an indeterminate period of time.
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.
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 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.’

(10) Article 32 is replaced by the following:

‘Article 32

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.’

Article 2

This Regulation shall enter into force on the 20th 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