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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) 1342/2008 of 18 December 2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks

Delegations will find attached document COM(2016) 647 final.

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Brussels, 30.9.2016
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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Regulation of the European Parliament
and of the Council amending Regulation (EC) 1342/2008 of 18 December 2008
establishing a long-term plan for cod stocks and the fisheries exploiting those stocks**

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 12 September 2012.
(document COM(2012) 498 final – 2012/236 COD):

Date of the opinion of the European Economic and Social Committee: 12 December 2012.

Date of the position of the European Parliament, first reading: 11 June 2013

Date of transmission of the amended proposal: 3 October 2016

Date of adoption of the position of the Council: 29 September 2016

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

In 2008, Council Regulation (EC) No 1342/2008 (the "Cod Recovery Plan") was adopted. The plan covered the North Sea and some adjacent seas (Kattegat, Skagerrak, eastern Channel, west of Scotland and the Irish Sea). Its main elements were rules for setting the total allowable catch (TAC) and a fishing effort regime limiting the time fishermen are allowed to spend at sea. Fishing effort limitations were perceived, at the time, as a necessary regulatory instrument, in addition to setting catch limits in the form of TAC (total allowable catch), in order to reduce discarding of fish. The plan foresaw consecutive and sometimes drastic reductions in fishing effort.

In 2012, the Commission proposed an amendment to Council Regulation (EC) No 1342/2008, to cater for some shortcomings of the plan while keeping its main elements. The proposal was based on Art. 43(2) TFEU and included also a provision which would allow the Council to rollover fishing effort after four consecutive reductions.

Taking a different stand on the relationship between Art. 43(2) and Article 43(3) TFEU, the Council carved out certain elements of the Commission proposal (Art. 9 and Art. 12) and adopted - on the basis of Article 43(3) TFEU - a corresponding amending regulation to the Cod Recovery Plan (Council Regulation (EU) 1243/2012) without any involvement of the

European Parliament. The amending regulation took over the rule to allow for rollovers in effort after four consecutive reductions.

The European Parliament and the Commission challenged this Council Regulation in Court, stating that the amendment of the Cod Recovery Plan in issue should have been adopted by means of the ordinary legislative procedure with the full involvement of the European Parliament pursuant to Article 43(2) TFEU and not by means of Council-only powers under Article 43(3) TFEU.

With its judgement of 1st December 2015 in Joined Cases C-124/13, European Parliament v Council, and C-125/13, Commission v Council, the Court annulled the Council Regulation in issue but maintained its effects for one additional year so that a new regulation - based on the correct legal basis of Article 43(2) TFEU - could be adopted within that period of time.

The fact that the Court allowed the effects of the annulled Council regulation to be maintained for one additional year made it necessary to pursue negotiations based on this COM proposal as there was not sufficient time to develop a new proposal and adopt it within in one year.

However, since the COM proposal was issued in 2012, circumstances have dramatically changed. The new Basic Regulation of the CFP (Regulation (EU) No 1380/2013) has introduced an obligation to land by 2019 all catches of species which are subject to catch limits ("landing obligation") which obliges fishermen to stop discarding and to count all catches against their quota shares (the progressive dates of entry into force of this obligation depend on the fishery and species defining fishery). Where the landing obligation applies, the effort regime, which also aims at reducing discards, has now become an unnecessary additional layer of regulation. For this reason, the Commission decided to abandon the effort regime in its proposal for a Baltic Sea Management Plan COM((2014)614.

The new Basic Regulation also introduced a provision which obliges the Council to set TACs based on the MSY (maximum sustainable yield) approach. This makes the TAC setting rules in the cod recovery plan obsolete.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1. General comments on Council position:

The position of the Council reflects the political agreement reached by the European Parliament and the Council on 29 June 2016. The Commission supports this agreement.

3.2. Amendments by the European Parliament at first reading:

During the negotiations, EP has revised its position. Therefore, the first reading position of EP taken on 11 June 2013 was considered as being less relevant for the negotiations.

3.3. Provisions introduced by the Council and Commission position in this regard:

The Council has significantly amended the text and reduced it to very few remaining provisions (except definitions, closing Articles, etc.):

- Article 5 on objectives, referring to the MSY objective in line with the Basic Regulation and the agreed Baltic MAP;

- Article 6 on minimum and precautionary measures, referring to the need to take into account "*appropriate minimum and precautionary biomass levels*" in line with the Basic Regulation, without specifying these levels;
- Article 9 on setting TACs in data poor conditions, referring to the precautionary approach set out in the Basic Regulation, without setting out any detailed rules;
- Former Article 14 was kept with minor changes. The Article sets out an obligation for Member States to make sure that in each of the areas covered by the plan, the fishing capacity does not exceed the fishing capacity that could be observed in 2006 or 2007;
- Article 25 (unchanged): obligation to land cod in designated ports;
- Article 33 (unchanged): Assistance under the EFF/EMFF: enabling payments from the EMFF.

The compromise text departs significantly from the original 2012 COM proposal but it is in line with the new rules set in the new Basic Regulation and Commission's new approach for the multiannual plans. The Commission can accept all changes.

4. CONCLUSION

The legal services and lawyer linguists of European Parliament and Council were mandated to make all the relevant adjustments to the text. The resulting document therefore represents the political agreement reached by the co-legislators on 29 July 2016.