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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 7 December 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: Proposal for a COUNCIL REGULATION fixing for 2017 the fishing
opportunities for certain fish stocks and groups of fish stocks in the Black
Sea

Delegations will find attached document COM(2016) 781 final.

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Brussels, 7.12.2016
COM(2016) 781 final

2016/0386 (NLE)

Proposal for a

COUNCIL REGULATION

**fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks
in the Black Sea**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Regulation (EC) No 1380/2013 of the European Parliament and the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC seeks to ensure that living aquatic resources are exploited under sustainable economic, environmental and social conditions. One important tool in this respect is the annual fixing of fishing opportunities.

The objective of this proposal is to fix, for the commercially most important fish stocks in the Black Sea, the fishing opportunities for Member States for 2017.

- **General context**

Black Sea stocks exploited by Bulgaria and Romania are shared with non-EU countries, e.g. Turkey, Ukraine, Georgia and Russian Federation. There are however no Total Allowable Catches (TAC) decided at regional level between EU and non-EU countries. Every year since 2008 the European Union has been fixing autonomous quotas for turbot and sprat stocks in order to help ensure that the CFP rules are applied.

The fisheries exploiting sprat are of high socio-economic significance for the Black Sea riparian countries. According to the 2015-2016 Black Sea assessment of the Scientific, Technical and Economic Committee for Fisheries (the STECF), the share of EU countries in the Black Sea sprat catch represented 4% in 2014, 14% in 2013 and 9% in 2012 of the official reported landings. According to the 2016 General Fisheries Commission for the Mediterranean (the GFCM) session report, the stock status of sprat in the Black Sea is sustainably exploited.

The fisheries exploiting turbot are of high socio-economic significance for the Black Sea riparian countries. According to the 2015-2016 Black Sea assessment of the STECF, the turbot stock is severely depleted. According to the GFCM's 2016 session report, the stock status of turbot in the Black Sea is overexploited and in overexploitation. The share of EU countries in the Black Sea turbot catch represented 7% in 2014, 5.5% in 2013 and 4.6% in 2012 of the official reported landings plus the IUU estimates. Thus, the need to establish an international recovery programme for turbot in the whole Black Sea has been one of the Commission's priorities in the recent years. Progress has been made in that respect at the 2015 GFCM annual session where the EU proposal for measures to prevent, deter and eliminate IUU fishing in turbot fisheries in the Black Sea was endorsed¹, and at the 2016 GFCM annual session where the EU proposal for scientific monitoring, management and control of turbot fisheries in the Black Sea was adopted².

¹ Recommendation GFCM/39/2015/3 establishing a set of measures to prevent, deter and eliminate illegal, unreported and unregulated fishing in turbot fisheries in the Black Sea adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 39th Session (Milan, May 2015).

² Recommendation GFCM/40/2016/6 on scientific monitoring, management and control of turbot fisheries in the Black Sea (GSA29) adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 40th Session (St Julian, May-June 2016).

The share of the catches between riparian countries has been drastically modified due to the recent integration of Crimea in the Russian Federation, which have redefined EEZs in the Black Sea.

The Communication from the Commission on the consultation on fishing opportunities for 2016 (COM(2015) 239 final), outlines the background to the proposal.

This year data gathering is not available due to data availability problems regarding non-EU sources. Consequently, the scientific advice on fishing opportunities in the Black Sea for 2017 will not be delivered by the STECF at the session scheduled in September 2016, which for the reason invoked has been postponed *sine die*. The scientific advice available at this stage corresponds to the evaluation of the stocks concerned made last year by the STECF and in March 2016 by the Working Group on stocks assessment of the GFCM. Taking into consideration the worrying status of turbot confirmed by the GFCM in 2016, the diagnosis on the status of this stock will remain the same: overexploited.

The proposal will need to be updated if eventually new advice and information become available, either by the STECF or the by the Working Group on stocks assessment of the GFCM. The assessment of this Working Group will not be endorsed by GFCM until the 2nd quarter of 2017. Therefore, the result of this group could be indicative but could not taken as official consolidated scientific advice.

- **Existing provisions in the area of the proposal**

Fishing opportunities and the way they are allocated to Member States are regulated annually. The latest such legal act is Council Regulation (EU) 2016/73³ of 18 January 2016 fixing for 2016 the fishing opportunities for certain fish stocks applicable in the Black Sea.

In addition to the annual fishing opportunities, the following measures relevant to the Black Sea fisheries covered by this proposal should be mentioned:

- Minimum conservation sizes and minimum mesh sizes regarding the turbot fishery in the Black Sea are established by Regulation (EU) No 227/2013 of the Council and the European Parliament of 13 March 2013⁴ amending Council Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms and Council Regulation (EC) No 1434/98 specifying conditions under which herring may be landed for industrial purposes other than direct human consumption.
- Recommendation GFCM/37/2013/2 establishing a set of minimum standards for bottom-set gillnet fisheries for turbot and conservation of cetaceans in the Black Sea adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 37th Session (Split, May 2013).
- Recommendation GFCM/39/2015/3 establishing a set of measures to prevent, deter and eliminate illegal, unreported and unregulated fishing in turbot fisheries in the Black Sea adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 39th Session (Milan, May 2015).

³ OJ L 19, 19.01.2015, p.1.

⁴ OJ L 78, 20.3.2013, p.1

- Recommendation GFCM/39/2015/4 establishing management measures for piked dogfish in the Black Sea adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 39th Session (Milan, May 2015).
 - Recommendation GFCM/40/2016/6 on scientific monitoring, management and control of turbot fisheries in the Black Sea adopted by the General Fisheries Commission for the Mediterranean (GFCM) in its 40th Session (St Julian, May-June 2016).
- **Consistency with other policies and objectives of the EU**

The proposed measures are in accordance with the objectives and rules of the Common Fisheries Policy and are consistent with the Union's policy on sustainable development.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Collection and use of expertise**

Main organisations/experts consulted

The scientific organisation consulted is the Scientific, Technical and Economic Committee for Fisheries (STECF).

The Union asks STECF each year for scientific advice on the state of important fish stocks. The STECF gives its advice following the terms of reference that it receives from the Commission. The most recent and accurate advice at the time of the discussion of this proposal at the Council will cover all Black Sea stocks for which quotas are proposed.

The ultimate objective is to bring and maintain the stocks to levels that can deliver Maximum Sustainable Yield (MSY). This objective has been incorporated expressly in the new basic Regulation of the CFP, whose Article 2(2) states that this objective "shall be achieved by 2015 where possible, and [...] by 2020 for all stocks". This reflects the commitment taken by the Union regarding the conclusions of the 2002 World Summit on Sustainable Development in Johannesburg and its related Plan of Implementation.

Consultation of interested parties

Interested parties were consulted via the Communication from the Commission on the Consultation on fishing opportunities for 2017. The scientific basis for the proposal will be provided by STECF. All STECF reports are available on the DG MARE website.

- **Impact assessment**

Based on the scientific advice, the proposed measures will result on keeping the current fishing opportunities in terms of catch volumes for Union fishing vessels in the Black Sea. The risk of negative impact on the recovery of the stock population is curtailed by additional control measures introduced and implemented by Romania and Bulgaria in complying with their commitments given by these Member States in the context of the adoption of the Regulation fixing for 2016 the fishing opportunities for certain fish stocks in the Black Sea.

The proposal reflects not only short-term concerns but is also part of a longer term approach whereby the level of fishing is gradually adapted to long-term sustainable levels.

The approach taken in the proposal might therefore, in the medium to long term, result in reduced fishing effort but stable or increasing quotas in the long term. The long-term consequences of the approach are expected to be a reduced impact on the environment as a consequence of the adaptation in fishing effort and unchanged or increased landings. The sustainability of fishing activities will increase in the long term.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal establishes the catch limitations applicable in the Black Sea to Union fisheries, in order to achieve the objective of the Common Fisheries Policy of ensuring fisheries at levels that are biologically, economically and socially sustainable.

- **Legal basis**

The legal basis of this proposal is Article 43(3) of the Treaty on the Functioning of the European Union.

The Union's obligations for sustainable exploitation of living aquatic resources arise from obligations set out in Article 2 of the basic regulation of the CFP.

- **Subsidiarity principle**

The proposal falls under the Union exclusive competence as referred to in Article 3(1)(d) of the Treaty on the Functioning of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason.

The Common Fisheries Policy is a common policy. According to Article 43(3) TFEU it is incumbent upon the Council to adopt the measures on the fixing and allocation of fishing opportunities.

The proposed Council Regulation allocates fishing opportunities to Member States. Having regard to Article 16(6) and (7) and Article 17 of Regulation 1380/2013, Member States are free to allocate such opportunities among vessels flying their flag as they see fit. Therefore, Member States have ample room for manoeuvre on decisions related to the social and economic models of their choice to exploit their allocated fishing opportunities.

The proposal has no new financial implications for Member States. This Regulation is adopted by the Council every year, and the public and private means to implement it are already in place.

- **Choice of instruments**

Proposed instruments: Regulation.

This is a proposal for fisheries management on the basis of Article 43(3) TFEU and in accordance with Article 16 of Regulation (EU) No 1380/2013 .

4. BUDGETARY IMPLICATION

The proposal has no implications for the Union budget.

5. OPTIONAL ELEMENTS

- **Simplification**

The proposal continues to provide for simplification of administrative procedures for public authorities (EU or national), as it contains provisions similar to those of the 2016 Regulation on the fishing opportunities in the Black Sea.

- **Review/revision/sunset clause**

The proposal concerns an annual Regulation for the year 2017 and therefore does not include a revision clause.

- **Detailed Explanation**

The proposal fixes for 2017 the fishing opportunities for certain stocks or groups of stocks for Member States fishing in the Black Sea.

The landing obligation for stocks caught in certain fisheries starts to become applicable from 1 January 2015. In the Black Sea these fisheries cover small pelagic fisheries, namely, the fishery for sprat, which is one of the stocks under quotas in this Regulation. From 1 January 2017 the landing obligation will apply to all catches for species which define the fisheries in the Black Sea.

With introduction of the landing obligation, in accordance with Article 16(2) of Regulation (EU) No 1380/2013, the fishing opportunities proposed shall reflect the change from amount landed to amount caught. This is done on the basis of the received scientific advice for the fish stocks in fisheries as referred to in Article 15(1) of Regulation (EU) No 1380/2013. The fishing opportunities should also be fixed in accordance with Articles 16(1) (referring to the principle of relative stability) and 16(4) (referring to the objectives of the Common Fisheries Policy and the rules provided for in multiannual plans). The proposed figures reflect the scientific advice and the framework for setting the quotas outlined in the Communication from the Commission on the Consultation on fishing opportunities for 2016.

Given the Commission's intention to ensure the sustainable use of fishery resources, in line with the Union's policy and international commitments while maintaining stable fishing opportunities, annual variations in fishing opportunities are limited as far as practicable, taking account of the status of a given stock.

In the absence of a TAC agreed by the riparian countries of the Black Sea, the EU autonomous quotas allocated to Member States are given in the Annex to the proposed Regulation.

In accordance with Article 2 of Council Regulation (EC) No 847/96⁵, it is proposed that Articles 3 and 4 do not apply to the stocks covered by this Regulation. However, in accordance with Article 15(9) of Regulation (EU) No 1380/2013 year-to-year flexibility envisaged therein applies to stocks covered by the landing obligation.

⁵ Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

Proposal for a

COUNCIL REGULATION

fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks in the Black Sea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.
- (2) Regulation (EU) No 1380/2013 of the European Parliament and of the Council¹ requires that conservation measures be adopted taking into account available scientific, technical and economic advice, including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF).
- (3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities by fishery or group of fisheries in the Black Sea including certain conditions functionally linked thereto, as appropriate. In accordance with Article 16(1) and (4) of Regulation (EU) No 1380/2013 fishing opportunities should be distributed among Member States in such a way as to ensure relative stability of each Member State's fishing activities for each stock or fishery and in accordance the objectives of the Common Fisheries Policy established in Article 2(2) of that Regulation.
- (4) The fishing opportunities should be established on the basis of the available scientific advice, taking into account biological and socio-economic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders.
- (5) For sprat fisheries the landing obligation referred to in Article 15(1) of Regulation (EU) No 1380/2013 applies from 1 January 2015. Article 16(2) of that Regulation provides that, when the landing obligation is introduced in respect of a fish stock, fishing opportunities are to be fixed taking into account the change from fixing fishing

¹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

opportunities that reflect landings to fixing fishing opportunities that reflect catches.

- (6) The use of fishing opportunities set out in this Regulation is subject to Council Regulation (EC) No 1224/2009² and in particular to Articles 33 and 34 thereof concerning the recording of catches and the notification of data on the exhaustion of fishing opportunities. It is therefore necessary to specify the codes to be used by the Member States when sending data to the Commission relating to landings of stocks subject to this Regulation.
- (7) In accordance with Article 2 of Council Regulation (EC) No 847/96³, the stocks that are subject to the various measures referred to therein must be identified
- (8) In order to avoid interruption of fishing activities and to ensure the livelihood of Union fishermen, it is important to open the fisheries concerned in the Black Sea on 1 January 2017. For reasons of urgency, this Regulation should enter into force immediately after its publication.
- (9) Fishing opportunities should be used in full compliance with the applicable law of the Union,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Subject matter, scope and definitions

Article 1 **Subject matter**

This Regulation fixes the fishing opportunities by Union fishing vessels flying the flag of Bulgaria and Romania for 2017 for certain fish stocks in the Black Sea.

- (a) Turbot (*Psetta maxima*)
- (b) Sprat (*Sprattus sprattus*)

Article 2 **Scope**

This Regulation shall apply to Union fishing vessels operating in the Black Sea.

² Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p.1).

³ Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

Article 3 Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "GFCM" means General Fisheries Commission for the Mediterranean;
- (b) "Black Sea" means the geographical sub-area 29 as defined in Annex I to Regulation (EU) No 1343/2011 of the European Parliament and the Council⁴;
- (c) "fishing vessel" means any vessel equipped for commercial exploitation of marine biological resources;
- (d) "Union fishing vessel" means a fishing vessel flying the flag of a Member State and registered in the Union;
- (e) "stock" means a marine biological resource that occurs in a given management area;
- (f) "Union autonomous quota" means a limit of the catches autonomously allocated to the Union fishing vessels in the absence of an agreed TAC.
- (g) 'analytical assessments' means a quantitative evaluation of trends in a given stock, based on data about the stock's biology and exploitation, which scientific review has indicated to be of sufficient quality to provide scientific advice on options for future catches;

⁴ Regulation (EU) No 1343/2011 of the European Parliament and of the Council of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 347, 30.12.2011, p. 44).

CHAPTER II

Fishing opportunities

Article 4

Allocation of fishing opportunities

The EU autonomous quotas for Union fishing vessels, the allocation of such quotas among Member States, and the conditions functionally linked thereto, where appropriate, are set out in the Annex

Article 5

Special provisions on allocations

The allocation of fishing opportunities among Member States as set out in this Regulation shall be without prejudice to:

- (a) exchanges made pursuant to Article 16(8) of Regulation (EU) No 1380/2013;
- (b) deductions and reallocations made pursuant to Article 37 of Regulation (EC) No 1224/2009;
- (c) deductions made pursuant to Articles 105 and 107 of Regulation (EC) No 1224/2009.

Article 6

Conditions for landing catches and by-catches not subject to the landing obligation

Catches and by-catches taken in the turbot fishery shall be retained on board or landed only if they have been taken by Union fishing vessels flying the flag of a Member State having a quota and that quota is not exhausted.

CHAPTER III

Final provisions

Article 7

Data transmission

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States send the Commission data relating to landings of quantities of stocks caught, they shall use the stock codes set out in the Annex to this Regulation.

Article 8
Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2017.

This Regulation shall be binding in its entirety and directly applicable in the Member States.

Done at Brussels,

For the Council
The President