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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	24 May 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2017) 3419 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 24.5.2017 amending Delegated Regulation (EU) No 1395/2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea

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Delegations will find attached document C(2017) 3419 final.

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Encl.: C(2017) 3419 final



Brussels, 24.5.2017  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 24.5.2017**

**amending Delegated Regulation (EU) No 1395/2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

One of the key elements of the Common Fisheries Policy (CFP) is the gradual introduction of landing obligation for all catches subject to catch limits. To this end, as laid down in Article 15 of Regulation (EU) No 1380/2013<sup>1</sup> the time-frames for the relevant fisheries as well as provisions for possible exemptions are set out.

The landing obligation for industrial fisheries came into force on 1 January 2015 with the Commission Delegated Regulation (EU) No 1395/2014<sup>2</sup> of 20 October 2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea.

Article 15(6) of Regulation (EU) No 1380/2013 in combination with Article 47 of Regulation (EC) No 850/98<sup>3</sup> allows adopting specific provisions that deviate from existing rules, if this is to reduce unwanted catches. Such measures shall be adopted by means of a delegated act adopted in accordance with Article 48a of Regulation (EC) No 850/98 and Article 18 of Regulation (EU) No 1380/2013, with the aim of increasing gear selectivity or reducing or, as far as possible, eliminating unwanted catches, and may, where appropriate, derogate from the measures set out in Regulation (EC) No 850/98.

The Scheveningen High Level Group (HLG), which consists of Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom, has submitted a joint recommendation (JR) to the European Commission on 7 February 2017, asking to lift the ban of the use of certain gears in the area referred to in Article 21(1)(c) of Regulation (EC) No 850/98 (the "sprat box"). The Scheveningen HLG suggests that lifting the ban in the "sprat box" would reduce unwanted catches.

The "sprat box" is regulated in Article 21(1)(c) of Regulation (EC) No 850/98, prohibiting keeping sprat on board the fishing vessel within a certain geographical area from 1 July to 31 October. In Article 21(3) of the Regulation (EC) No 850/98 the use of certain gear in the sprat box is prohibited.

The fishing with certain gears (*e.g.* small mesh pelagic gear) in an area of the Danish North Sea coast is banned in the "sprat box" to protect (spawning) herring which is bycaught in the sprat fishery. According to data from Herring Assessment Working Group (HAWG) of the International Council for the Exploration of the Sea (ICES), herring bycatches in the area have been very low in the last couple of years, actually even lower than outside the "sprat box".

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<sup>1</sup> 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. 22–61).

<sup>2</sup> Commission Delegated Regulation (EU) 1395/2014 of 20 October 2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea (OJ L 370, 30.12.2014, p. 35).

<sup>3</sup> Council Regulation (EC) No 850/98 of 30 March 1998 for conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L 125, 27.4.1998, p. 1).

In accordance with Article 18 of Regulation (EU) No 1380/2013, the proposal is based on the joint recommendation (JR) elaborated and submitted to the Commission by the Member States concerned.

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

### **Stakeholder consultations**

In 2013, 2014 and 2015 Danish vessels participated in an experimental sprat fishery inside and outside the "sprat box". Samples were analyzed by National Institute of Aquatic Resources at the Danish Technical University (DTU Aqua). In April 2016, the ICES's HAWG evaluated the findings of DTU Aqua.

ICES published on 2 June 2016 a report from HAWG. In this report ICES concludes the following on bycatch of herring in the sprat fisheries in the closed area on the Danish North Sea coast (the "sprat box"): "There was no evidence of a higher proportion of herring in catches taken inside the sprat box compared to samples taken outside the box. In fact, the proportion of herring in commercial samples taken inside the box was lower than outside the box in each year and across years, this difference was significant in both models".

Scheveningen HLG consulted the Pelagic Advisory Council (AC) and the North Sea (NS) Advisory Council on 18 November 2016 asking for specific recommendations regarding derogation from the "sprat box".

In their response to this request both ACs supported the suggested derogation from the sprat box. NS AC members agreed that the "sprat box" currently prevents the flexibility required to allow vessels to fish where they can reduce their unwanted bycatch as much as possible.

### **The International Council for the Exploration of the Sea (ICES)**

On the Commission request to assess the effects of lifting the ban in the "sprat box" ICES provided an advice published on 29 March 2017<sup>4</sup>. ICES advises that the proportion of herring caught by weight in an experimental fishery for sprat was higher outside than inside the "sprat box", but there was no difference when measured by number. On this basis, fishing inside the "sprat box" would be expected to reduce unwanted catches of herring (by weight) compared to fishing outside; ICES advises that it is unlikely there would be any effect on herring or sprat stocks if the ban in the "sprat box" was lifted. ICES considers that there is no further need to review the impact of the proposed lift on the "sprat box" as other management measures are sufficient to control herring bycatch.

## **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

### **Summary of the proposed action**

The main legal action is to adopt measures that would be necessary to comply with obligations under Union environmental law.

The regulation specifies the fisheries in certain areas to which specific measures would apply.

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<sup>4</sup> <http://www.ices.dk/sites/pub/Publication%20Reports/Forms/DispForm.aspx?ID=32869>

### **Legal basis**

Articles 15(6) and 18(1) and (3) of Regulation of the European Parliament and of the Council (EU) No 1380/2013.

### **Subsidiarity principle**

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

### **Proportionality principle**

The proposal is within the scope of the delegated powers provided to the Commission by Article 18(1) of Regulation (EU) No 1380/2013 and does not go beyond what is necessary to achieve the purpose of that provision.

### **Choice of instrument**

Proposed instrument: Commission Delegated Regulation.

Other means would not be adequate for the following reason: The Commission has been granted powers to adopt a discard plan by means of delegated acts. Member States having a direct management interest submitted their joint recommendation. Measures provided in the joint recommendation and included in this proposal are based on the best available scientific advice and fulfil all the relevant requirements set out in Article 18(5) of Regulation (EU) No 1380/2013.

COMMISSION DELEGATED REGULATION (EU) .../...

of 24.5.2017

**amending Delegated Regulation (EU) No 1395/2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular Articles 15(6) and 18(1) and (3) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 aims to progressively eliminate discards in Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits.
- (2) Commission Delegated Regulation (EU) No 1395/2014<sup>2</sup> established a discard plan in order to implement the landing obligation in certain small pelagic fisheries and fisheries for industrial purposes in the North Sea.
- (3) According to Article 15(6) of Regulation (EU) No 1380/2013, in conjunction with its Article 15(5)(a), discard plans may include technical measures aimed at reducing or, as far as possible, eliminating unwanted catches.
- (4) Belgium, Denmark, Germany, France, the Netherlands, Sweden and the United Kingdom have a direct fisheries management interest in the North Sea. After consulting the North Sea Advisory Council and the Pelagic Advisory Council, those Member States have submitted on 7 February 2017 a joint recommendation for a technical measure.
- (5) The joint recommendation suggests in particular that Delegated Regulation (EU) No 1395/2014 be amended to include derogation from paragraph 3 of Article 21 of Council Regulation (EC) No 850/98<sup>3</sup>, which prohibits the use of certain fishing gear in an area along the Danish North Sea coast.

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<sup>1</sup> [OJ L 354, 28.12.2013, p. 22](#)

<sup>2</sup> Commission Delegated Regulation (EU) No 1395/2014 of 20 October 2014 establishing a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea (OJ L 370, 30.12.2014, p. 35).

<sup>3</sup> Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L 125 27.4.1998, p. 1)

- (6) The prohibition laid down by paragraph 3 of Article 21 of Regulation (EC) No 850/98 had been introduced in order to protect herring which is bycaught in the sprat fishery.
- (7) According to the consultations carried out by the interested Member States, the proportion of herring in catch samples taken inside the relevant area is currently lower than the proportion of herring in catch samples taken outside that area. Those consultations indicated that the prohibition established by paragraph 3 of Article 21 of Regulation (EC) No 850/98 currently prevents the flexibility required to allow vessels to fish where they can reduce their unwanted bycatch as much as possible.
- (8) Scientific contributions were obtained from relevant scientific bodies and reviewed by the International Council for the Exploration of the Seas (ICES). On 28 February 2017 an Expert Group Fisheries and Aquaculture took place and the measures concerned were discussed.
- (9) ICES advises<sup>4</sup> that the proportion of herring caught by weight in an experimental fishery for sprat was higher outside than inside the sprat box, but there was no difference when measured by number. On this basis, fishing inside the sprat box would be expected to reduce unwanted catches of herring (by weight) compared to fishing outside; ICES advises that it is unlikely there would be any effect on herring or sprat stocks if the sprat box was lifted. ICES considers that there is no further need to review the sprat box as other management measures are sufficient to control herring bycatch.
- (10) The measures suggested in the joint recommendation comply with Article 18(3) of Regulation (EU) No 1380/2013 and may be included in Delegated Regulation (EU) No 1395/2014.
- (11) Delegated Regulation (EU) No 1395/2014 should therefore be amended accordingly.
- (12) As the measures provided for in this Regulation have a direct impact on the economic activities linked to and the planning of the fishing season of Union vessels, this Regulation should enter into force immediately after its publication.

HAS ADOPTED THIS REGULATION:

*Article 1*

In Delegated Regulation (EU) No 1395/2014, the following Article 4a is inserted:

*"Article 4a*

***Technical measures for sprat fisheries in an area along the Danish North Sea coast***

By way of derogation from paragraph 3 of Article 21 of Regulation (EC) 850/98, fishing for sprat with the following fishing gears shall be authorised in the area along the Danish North Sea coast defined in paragraph (1)(c) of that Article:

- (a) towed gear with a mesh size of less than 32 mm;

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<sup>4</sup> <http://www.ices.dk/sites/pub/Publication%20Reports/Forms/DispForm.aspx?ID=32869>

(b) purse seines; or

(c) gillnets, entangling nets, trammel nets and drift nets with a mesh size of less than 30 mm."

### *Article 2*

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

This Regulation should be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*

*Jean-Claude JUNCKER*  
*The President*