



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 4 March 2014
(OR. en)**

**Interinstitutional File:
2012/0216 (COD)**

**6103/1/14
REV 1**

**PECHE 51
ENV 106
CODEC 307
PARLNAT 77**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading in view of the adoption of the
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL amending Council Regulation (EC) No 812/2004 laying down
measures concerning incidental catches of cetaceans in fisheries
- Adopted by the Council on 3 March 2014

REGULATION (EU) No .../2014
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Council Regulation (EC) No 812/2004
laying down measures concerning incidental catches of cetaceans in fisheries

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,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 11, 15.1.2013, p. 85.

² Position of the European Parliament of 16 April 2013 (not yet published in the Official Journal) and position of the Council at first reading of 3 March 2014 (not yet published in the Official Journal). Position of the European Parliament of ... (not yet published in the Official Journal).

Whereas:

- (1) Council Regulation (EC) No 812/2004¹ confers powers on the Commission in order to implement some of the provisions of that Regulation. Following the entry into force of the Lisbon Treaty, it is appropriate to align those powers to Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU).
- (2) In order to ensure the efficient adaptation of certain provisions of Regulation (EC) No 812/2004 to technical and scientific progress, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of technical specifications and conditions relating to the signal characteristics and implementation characteristics of the use of acoustic deterrent devices. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

¹ Council Regulation (EC) No 812/2004 of 26 April 2004 laying down measures concerning incidental catches of cetaceans in fisheries and amending Regulation (EC) No 88/98 (OJ L 150, 30.4.2004, p. 12).

- (3) In order to ensure uniform conditions for the implementation of the provisions of Regulation (EC) No 812/2004 laying down rules on the procedure and format for reporting by Member States, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.
- (4) In view of the requirement for Member States to take the necessary measures to establish a system of strict protection for cetaceans in accordance with Regulation (EC) No 812/2004, and given the shortcomings of that Regulation identified by the Commission, the appropriateness and effectiveness of the provisions of that Regulation for protecting cetaceans should be reviewed by 31 December 2015. On the basis of that review, the Commission should, if appropriate, submit to the European Parliament and to the Council an overarching legislative proposal for ensuring the effective protection of cetaceans, including through the regionalisation process.
- (5) Regulation (EC) No 812/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

¹ 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 powers (OJ L 55, 28.2.2011, p. 13).

Article 1

Regulation (EC) No 812/2004 is amended as follows:

(1) Article 3(1) is replaced by the following:

"1. Acoustic deterrent devices used in application of Article 2(1) shall comply with the technical specifications and conditions of use set out in Annex II. In order to ensure that Annex II continues to reflect the state of technical and scientific progress, the Commission shall be empowered to adopt delegated acts, in accordance with Article 8a, updating the signal characteristics and the corresponding implementation characteristics therein. When adopting those delegated acts, the Commission shall make provision for sufficient time for the implementation of such adaptations."

(2) In Article 7, the following paragraph is added:

"3. By 31 December 2015, the Commission shall review the effectiveness of the measures provided for in this Regulation and shall, if appropriate, submit to the European Parliament and to the Council an overarching legislative proposal for ensuring the effective protection of cetaceans."

- (3) Article 8 is replaced by the following:

"Article 8

Implementation

The Commission may adopt implementing acts establishing detailed rules on the procedure for and the format of the reporting provided for in Article 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 8b(2).".

- (4) The following Articles are inserted:

"Article 8a

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 power to adopt delegated acts referred to in Article 3(1) shall be conferred on the Commission for a period of four years from ...^{*}. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

^{*} OJ: Please insert the date of entry into force of the amending Regulation.

3. The delegation of power referred to in Article 3(1) 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 Article 3(1) shall enter into force only if no objection 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 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 two months at the initiative of the European Parliament or of the Council.

Article 8b

Committee procedure

1. The Commission shall be assisted by the Committee for fisheries and aquaculture established by Article 47 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council^{*}. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council^{**}.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

^{*} 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).

^{**} 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 powers (OJ L 55, 28.2.2011, p. 13).".

Article 2

This Regulation shall enter into force on the twentieth 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 ...,

For the European Parliament
The President

For the Council
The President
