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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 23.11.2017 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) 7695 final.

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Encl.: C(2017) 7695 final



Brussels, 23.11.2017  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 23.11.2017**

**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**

A key objective of the new Common Fisheries Policy (CFP) is the progressive elimination of discards in all EU fisheries. Designed to make better use of the available resources, it responds to public pressure to end the practice of throwing marketable fish back into the sea. The CFP also foresees increased regionalisation, which is intended both to move away from micromanagement at Union level, and also to ensure that rules are adapted to the specific characteristics of each fishery and sea basin.

The landing obligation in the North Sea (NS) applies as of 1<sup>st</sup> January 2015. So far neither multiannual plans nor management plans for pelagic species under the framework of the CFP have been adopted. 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<sup>1</sup> expires as of 31 December 2017. However, Regulation (EU) No 1380/2013 (the Basic Regulation) on the CFP<sup>2</sup> foresees the possibility to adopt for a period of no more than 3 years and renewable once a specific discard plan to support the implementation of a landing obligation. It is crucial to ensure that the specific provisions implementing the landing obligation continue to apply after the expiration of the discard plans. Therefore Article 15(6) of Regulation (EU) No 1380/2013 was amended in order to extend the validity of discard plans by another period of three years. Therefore provisions established in the Delegated Regulation No 1395/2014 are proposed to be extended only for three years, i.e. until 31 December 2020.

This proposal specifies the details for the implementation of the landing obligation in the NS as circumscribed in Article 15 (6) of the Basic Regulation, namely:

- provisions for *de minimis* exemptions.

In accordance with Article 18 of the Basic Regulation, the proposal is based on the joint recommendation (JR) developed and submitted to the Commission by Member States concerned, namely, Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom.

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

#### **Stakeholder consultations**

For the purpose of implementing the regionalised approach the Scheveningen High-Level Group (Belgium, Denmark, France, Germany, the Netherlands, Sweden and the United Kingdom) agreed that the chair of the group, the Netherlands, should submit to the Commission a joint recommendation. Accordingly, the JR was submitted to the Commission services on 31 May 2017. In accordance with the procedure described in Article 18 of Regulation (EU) No 1380/2013, this JR is the result of discussions between the NS Member States having a direct management interest, and taking account of the views of the North Sea Advisory Council and of the Pelagic Advisory Council, which are concerned by the fisheries covered by the JR.

The JR was developed by the Member States concerned, cooperating in a regional setup, working together on a technical level under the guidance of a high level group of fisheries Directors and in close consultation with interested parties.

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<sup>1</sup> OJ L 370, 30.12.2014, p.35.

<sup>2</sup> OJ L 354, 28.12.2013, p.22.

Elements related to the implementation of the landing obligation and specific provisions included in the joint recommendation for the NS discard plan have been discussed and reviewed by the relevant Scientific Technical and Economic Committee for Fisheries (STECF) Expert Working Group and during the STECF plenary meetings of 10-14 July 2017<sup>3</sup>.

On the basis of the evaluation by STECF and by the Commission, and following clarification of certain points of the JR, the Commission considers that the JR complies with Article 15(6) of Regulation (EC) No 1380/2013 as outlined above.

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

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

The main legal action is to adopt measures that would facilitate the implementation of the landing obligation. The Regulation specifies the species and fisheries to which specific measures would apply and it fixes the level of *de minimis* exemptions applicable to avoid disproportionate costs of handling unwanted catches.

#### **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.

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<sup>3</sup> [2017-07 STECF PLEN 17-02 JRCxxx.pdf](#)

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

of 23.11.2017

**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 Article 15(6) and 18(1) and (3) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 aims to progressively eliminate discards in all Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits.
- (2) Article 15(6) of Regulation (EU) No 1380/2013 empowers the Commission to adopt discard plans by means of a delegated act for a period of no more than three years and renewable once on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.
- (3) Commission Delegated Regulation (EU) No 1395/2014<sup>2</sup> established a discard plan for certain small pelagic fisheries and fisheries for industrial purposes in the North Sea, in order to facilitate the implementation of the landing obligation by means of certain flexibility mechanisms.
- (4) Exemptions from the obligation to land all catches may be specified in accordance with Article 15(5)(c) of Regulation (EU) No 1380/2013 where scientific evidence indicates that increases in selectivity are very difficult or where handling unwanted catches entails disproportionate costs ('*de minimis* exemptions').
- (5) Belgium, Denmark, France, Germany, 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 31 May 2017 a joint recommendation to the Commission.
- (6) The joint recommendation suggests to establish for the years 2018, 2019 and 2020 a *de minimis* exemption for up to a maximum of 1 % of the total annual catches of mackerel, horse mackerel, herring and whiting in the small pelagic fisheries with midwater trawlers (OTM and PTM) up to 25 m in length overall, targeting mackerel, horse mackerel and herring in ICES divisions IVb and c south of 54 degrees north.

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

<sup>2</sup> [OJ L 370, 30.12.2014, p. 35.](#)

- (7) The Member States provided scientific evidence to demonstrate that handling unwanted catches in the relevant fisheries entails disproportionate costs. That evidence was reviewed by the Scientific, Technical and Economic Committee for fisheries (STECF). STECF noted that the *de minimis* exemption may provide an incentive for the fleets involved to adapt their behaviour and continue research on ways to improve selectivity. Therefore, the suggested exemption concerned may be included in Delegated Regulation (EU) No 1395/2014.
- (8) The duration of the discard plan should therefore be extended until 31 December 2020.
- (9) Articles 2, 4 and 4a of the Delegated Regulation (EU) No 1395/2014 provide respectively for a survivability exemption for mackerel and herring caught in the purse seine fisheries, for documentation of catches and for technical measures for sprat fisheries. The measure on survivability exemption was positively evaluated by STECF in 2014 and the technical measures for sprat fisheries were positively evaluated by International Council for the Exploration of the Seas (ICES) in 2017. The Commission considers that the evidence on which that evaluation was based remains valid for the next three years. Therefore it is appropriate to extend the application of the measures until 2020.
- (10) Delegated Regulation (EU) No 1395/2014 and its Annex should be amended accordingly.
- (11) Since the measures provided for in this Regulation impact directly 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. Considering that the discard plan established by Delegated Regulation (EU) No 1395/2014 expires on 31 December 2017, this Regulation should apply from 1 January 2018,

HAS ADOPTED THIS REGULATION:

*Article 1*

Delegated Regulation (EU) No 1395/2014 is amended as follows:

- (1) In Article 3, the heading is replaced by the following: "*De minimis* exemption in the years 2015 and 2016"
- (2) The following article 3a is inserted:

*"Article 3a*

***De minimis* exemption in the years 2018, 2019 and 2020**

'By way of derogation from Article 15(1) of Regulation (EU) No 1380/2013, up to a maximum of 1 % of the total annual catches of mackerel, horse mackerel, herring and whiting in the pelagic fishery carried out by pelagic trawlers up to 25 metres in length overall, using mid-water trawls (OTM/PTM), and targeting mackerel, horse mackerel and herring in ICES divisions IVb and c south of 54 degrees north, may be discarded in 2018, 2019 and 2020.'

- (3) In Article 5 the second paragraph is replaced by the following:  
"It shall apply from 1 January 2015 to 31 December 2020."
- (4) The Annex is replaced by the text in the Annex to this Regulation.

*Article 2*

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 2018.

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

Done at Brussels, 23.11.2017

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*