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COVER NOTE

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 5.8.2020 amending Delegated Regulation (EU) 2018/161 establishing a <i>de minimis</i> exemption to the landing obligation for certain small pelagic fisheries in the Mediterranean Sea, as regards its period of application

Delegations will find attached document C(2020) 5295 final.

Encl.: C(2020) 5295 final



Brussels, 5.8.2020
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COMMISSION DELEGATED REGULATION (EU) .../...

of 5.8.2020

amending Delegated Regulation (EU) 2018/161 establishing a *de minimis* exemption to the landing obligation for certain small pelagic fisheries in the Mediterranean Sea, as regards its period of application

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

A key objective of the Regulation (EU) No 1380/2013¹ on the Common Fisheries Policy (CFP) is the progressive elimination of discards in all EU fisheries. The landing obligation was designed to make better use of the available resources and respond to public interest to end the practice of throwing fish back into the sea. In the Mediterranean, the landing obligation applies since 1 January 2015 to small pelagic fisheries catching small pelagics subject to a minimum conservation reference size (MCRS), as listed in Annex IX to Regulation (EU) No 2019/1241² (Technical Measures Regulation). It concerns anchovy (*Engraulis encrasicolus*), sardine (*Sardina pilchardus*), mackerel (*Scomber* spp.) and horse mackerel (*Trachurus* spp.).

Article 15(4)(c) read in conjunction with Article 15(5)(c) of the CFP provides for a flexibility mechanism granting a specific exemption ('*de minimis*') where scientific evidence indicates that increases in selectivity are very difficult to achieve or to avoid disproportionate costs of handling unwanted catches.

Since '*no measures have been adopted for the purpose of specifying the de minimis exemption either in a multiannual plan or in a specific discard plan*' for small pelagic fisheries in the Mediterranean Sea, Article 15(7) of the CFP empowers the Commission to adopt a delegated act setting a *de minimis* exemption to the landing obligation, limiting such exemption to an amount of no more than 5 % of the total annual catches of all species to which the landing obligation applies. This article does not set a maximum duration for such exemption; however, the proposal limits its duration to 3 years to allow for a regular review of the exemptions in place in light of the scientific evidence available.

Commission Delegated Regulation (EU) No 2018/161³ provides for a combined *de minimis* exemption that applies to small pelagic fisheries catching anchovy, sardine, mackerel and horse mackerel and it expires on 31 December 2020.

Where a *de minimis* exemption is considered, the Member States concerned⁴ should provide the underpinning scientific evidence. If the Scientific, Technical and Economic Committee for

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.

² Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005, OJ L 198, 25.7.2019, p. 105.

³ Commission Delegated Regulation (EU) 2018/161 of 23 October 2017 establishing a *de minimis* exemption to the landing obligation for certain small pelagic fisheries in the Mediterranean Sea, OJ L 30, 2.2.2018, p. 1.

⁴ Pescamed High-Level group in the western Mediterranean (Spain, France and Italy), Adriatica High-Level group in the Adriatic Sea (Italy, Croatia and Slovenia) and Sudestmed High-Level group in the south-eastern Mediterranean Sea (Greece, Italy, Cyprus and Malta).

Fisheries (STECF) indicate that the evidence justifies granting the exemption, the Commission shall adopt a delegated act setting a *de minimis* exemption to the landing obligation.

This proposal provides for the extension until 31 December 2023 of the temporary exemption already granted until 31 December 2020 by Commission Delegated Regulation (EU) 2018/161:

- *de minimis* exemption for anchovy, sardine, mackerel and horse mackerel, up to 5% of the total annual catches of those species caught by vessels using mid-water trawls and purse seines in the western Mediterranean Sea, in the Adriatic Sea and in the south-eastern Mediterranean Sea, except in the Island of Malta, in the south of Sicily, in the Aegean Sea, in the Island of Crete, in the southern Adriatic and Ionian Sea;

- *de minimis* exemption for anchovy, sardine, mackerel and horse mackerel, up to 3% of the total annual catches of those species caught by vessels using purse seines, in the Island of Malta, in the south of Sicily, in the Aegean Sea, in the Island of Crete, in the southern Adriatic and Ionian Sea.

The *de minimis* exemption applies to several species caught at the same time by small scale fishing vessels and at highly varying quantities, which makes a single stock approach more challenging, and landed at many different landing points spread out geographically along the coast. Those species are subject to minimum conservation sizes as defined in Annex IX to the Technical Measures Regulation, and not, at this stage, to catch limits, which does not allow to implement Article 15(8) and (9) of Regulation (EU) No 1380/2013. In this context, the Commission considers that it would be acceptable to apply the *de minimis* exemption to those groups of species.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Mediterranean Advisory Council (MEDAC) noted that Commission Delegated Regulation (EU) 2018/161 expires on 31 December 2020. Arguing that the exploitation patterns of small pelagic fisheries in the sub-basins of the Mediterranean Sea are stable, the MEDAC suggested that the provisions under Commission Delegated Regulation (EU) 2018/161 should be prolonged for 3 years.

The STECF reviewed the scientific evidence submitted by the Member States having a direct management interest in small pelagic fisheries in the Mediterranean Sea and the *de minimis* exemption applicable to small pelagic fisheries in the Mediterranean Sea.

The Member States' Expert Group for Fisheries and Aquaculture discussed the proposal.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

- Summary of the proposed action

The act aims at facilitating the implementation of the landing obligation. It fixes a *de minimis* exemption applicable to small pelagic fisheries using mid-water trawls and/or purse seines to avoid disproportionate costs of handling unwanted catches.

The *de minimis* exemption applies only to anchovy, sardine, mackerel and horse mackerel. These small pelagic fish are subject to the landing obligation because they are subject to minimum conservation reference sizes (MCRS), as listed in Annex IX to Regulation (EU) No 2019/1241.

- Legal basis

Articles 15(7) of Regulation (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 15(7) of Regulation (EU) No 1380/2013.

- Choice of instrument

The proposed instrument is a Commission Delegated Regulation.

Other means would not be adequate because the Commission has been granted powers to adopt a *de minimis* exemption specifically by means of a delegated act.

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

of 5.8.2020

amending Delegated Regulation (EU) 2018/161 establishing a *de minimis* exemption to the landing obligation for certain small pelagic fisheries in the Mediterranean Sea, as regards its period of application

THE EUROPEAN COMMISSION,

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

Having regard 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/EC⁵, and in particular Article 15(7) thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 aims to eliminate progressively discards in all Union fisheries through the introduction of a landing obligation for catches of species subject to catch limits. In the Mediterranean Sea, it also applies to catches of species subject to minimum conservation reference sizes as listed in Annex IX to Regulation (EU) 2019/1241 of the European Parliament and of the Council⁶.
- (2) According to Article 15(1)(a) of Regulation (EU) No 1380/2013, the landing obligation applies to small pelagic fisheries from 1 January 2015.
- (3) In order to avoid disproportionate costs of handling unwanted catches, Commission Delegated Regulation (EU) 2018/161⁷ allowed the discarding of a small percentage of catches of species subject to minimum conservation reference sizes. It provides for a combined *de minimis* exemption that applies to small pelagic fisheries using pelagic

⁵ 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).

⁶ Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 (OJ L 198, 25.7.2019, p. 105).

⁷ Commission Delegated Regulation (EU) 2018/161 of 23 October 2017 establishing a *de minimis* exemption to the landing obligation for certain small pelagic fisheries in the Mediterranean Sea (OJ L 30, 2.2.2018, p. 1).

mid-water trawl and/or purse seines and catching anchovy, sardine, mackerel and horse mackerel in the General Fisheries for the Commission of the Mediterranean (GFCM) geographical sub-areas 1, 2, 5, 6, 7, 8, 9, 10, 11.1, 11.2, and 12 (western Mediterranean Sea); 17 and 18 (Adriatic Sea); and 15, 16, 19, 20, 22, 23 and 25 (south-eastern Mediterranean Sea).

- (4) Delegated Regulation (EU) 2018/161 is to apply until 31 December 2020.
- (5) In May 2020, the Pescamed Member States High-Level group in the western Mediterranean (Spain, France and Italy), Adriatica High-Level group in the Adriatic Sea (Croatia, Italy and Slovenia) and Sudestmed High-Level group in the south-eastern Mediterranean Sea (Greece, Italy, Cyprus and Malta) having a direct management interest for small pelagic fisheries in the Mediterranean Sea submitted scientific evidence to request the prolongation of the *de minimis* exemption laid down in Delegated Regulation (EU) 2018/161.
- (6) In May 2020, an expert working group of the Scientific, Technical and Economic Committee for Fisheries (STECF) reviewed the scientific evidence submitted and considered that prolonging the *de minimis* exemption would require additional evidence, in particular concerning the level of discards reported in the fisheries concerned.
- (7) In June 2020, the three Member States High-Level groups submitted additional evidence to reply to the observations of the STECF's expert working group. In light of the additional evidence submitted, the STECF⁸ concluded that the scientific criteria justifying the prolongation of the *de minimis* exemption granted under Delegated Regulation (EU) 2018/161 were met.
- (8) The *de minimis* exemption provided for in Delegated Regulation (EU) 2018/161 applies to several species caught at the same time by small scale fishing vessels and at highly varying quantities, and landed at many different landing points spread out geographically along the coast, which makes a single stock approach more difficult[?]. Those species are subject to minimum conservation sizes as listed in Annex IX to Regulation (EU) 2019/1241.
- (9) The information provided as regards the disproportionate costs of handling unwanted catches and as regards the levels of unwanted catches has improved. However, the STECF notes that improvement in collecting discards data is still needed. In this context, and to avoid disproportionate costs of handling unwanted catches and the interruption of the activities of the fisheries concerned and of related economic activities, the Commission considers it appropriate to prolong the period of application of the *de minimis* exemption laid down in Delegated Regulation (EU) 2018/161.
- (10) Delegated Regulation (EU) 2018/161 should therefore be amended accordingly.

⁸ Scientific, Technical and Economic Committee for Fisheries (STECF) Evaluation of Joint Recommendations on the Landing Obligation and on the Technical Measures Regulation (STECF-20-04). Publications Office of the European Union, Luxembourg, 2020, <https://stecf.jrc.ec.europa.eu/documents/43805/2694823/STECF+20-04+-+Eval+JRs+LO+and+TM+Reg.pdf/d71aef4f-7366-48cb-9cdb-afcf58565ee6>

- (11) Since the measures provided for in this Regulation impact directly on the planning of the fishing season of Union vessels and on related economic activities, this Regulation should enter into force immediately after its publication. For the purpose of legal certainty and as Delegated Regulation (EU) 2018/161 expires on 31 December 2020, this Regulation should apply from 1 January 2021.

HAS ADOPTED THIS REGULATION:

Article 1

In Article 4 of Delegated Regulation (EU) 2018/161, the second paragraph is replaced by the following:

‘It shall apply until 31 December 2023’.

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 2021.

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

Done at Brussels, 5.8.2020

For the Commission
The President
Ursula VON DER LEYEN