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COVER NOTE

From:	Ms Ilze JUHANSONE, Secretary-General of the European Commission
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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 28.8.2020 amending Delegated Regulation (EU) 2019/2238 as regards high survivability and de minimis exemptions applicable to certain demersal fisheries in the North Sea

Delegations will find attached document C(2020) 5823 final.

Encl.: C(2020) 5823 final



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

of 28.8.2020

amending Delegated Regulation (EU) 2019/2238 as regards high survivability and de minimis exemptions applicable to certain demersal fisheries in the North Sea

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

A key objective of the Regulation (EU) No 1380/2013 of the Common Fisheries Policy (CFP)¹ is the progressive elimination of discards in all EU fisheries. As of 1 January 2019 the landing obligation started to apply to all catches of species subject to the catch limits in the North Sea. The basic regulation also provides for increased regionalisation, to ensure that rules are adapted to the specific characteristics of each fishery and sea area.

Regulation (EU) No 1380/2013 stipulates that details of the implementation of the landing obligation and specific flexibility mechanisms need to be established through multiannual plans or, in their absence, through 'discard plans'.

Regulation (EU) 2018/973² establishing the multiannual management plan for demersal stocks in the North Sea and the fisheries exploiting those stocks was adopted in 2018 covering the demersal stocks in the North Sea.

For all stocks of species in the North Sea to which the landing obligation applies under Article 15 of Regulation (EU) No 1380/2013, Article 11 of Regulation (EU) 2018/973 provides the empowerment to the Commission to adopt delegated acts in accordance with Article 16 of this Regulation and Article 18 of Regulation (EU) No 1380/2013 in order to supplement the Regulation (EU) 2018/973 by specifying details of that obligation as provided in points (a) to (e) of Article 15(5) of Regulation (EU) No 1380/2013.

Regulation (EU) 2019/2238³ specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021 was adopted in 2019. Regulation (EU) 2018/2035⁴ specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2019-2021 was adopted in 2018. Previous to Regulation (EU) No 2018/2035, discard plans for demersal fisheries in the North Sea were in force for the years 2016, 2017 and 2018.

In accordance with Article 18 of Regulation (EU) No 1380/2013, the proposed delegated act is based on the joint recommendations (JR) developed and submitted to the Commission by the Member States concerned (i.e. Belgium, Denmark, France, Germany, the Netherlands and Sweden) who have a direct management interest in the relevant fisheries in this region.

2. LEGAL ELEMENTS OF THE DELEGATED ACT

Summary of the proposed action

The main legal action is to adopt the measures that would facilitate the implementation of the landing obligation.

The Regulation specifies species and fisheries to which specific measures would apply: i.e. high survivability and the *de minimis* exemptions.

Legal basis

Article 11 of Regulation (EU) 2018/973.

Subsidiarity principle

The delegated regulation falls under the exclusive competence of the European Union.

¹ OJ L 354, 28.12.2013, p.22.

² OJ L 179, 16.07.2018, p. 1-13.

³ OJ L 336, 30.12.2019, p. 34 - 46

⁴ OJ L 327, 21.12.2018, p. 17.

Proportionality principle

The delegated regulation is within the scope of the delegated powers provided to the Commission by Article 11 of Regulation (EU) 2018/973 and does not go beyond what is necessary to achieve the purpose of those provisions.

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 and the details of the implementation of the landing obligation by means of delegated acts. Member States having a direct management interest submitted the JR. Measures provided for in the JR and included in this regulation are based on the best available scientific advice and fulfil all relevant requirements set out in Article 18(5) of Regulation (EU) No 1380/2013.

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

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amending Delegated Regulation (EU) 2019/2238 as regards high survivability and de minimis exemptions applicable to certain demersal fisheries in the North Sea

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008⁵, and in particular Article 11 thereof,

Whereas:

- (1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁶ 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 9 of Regulation (EU) No 1380/2013 provides for the adoption of multiannual plans containing conservation measures for fisheries exploiting certain stocks in a relevant geographical area. Such multiannual plans specify details of the implementation of the landing obligation and may empower the Commission to further specify those details on the basis of joint recommendations developed by Member States.
- (3) Regulation (EU) 2018/973 of the European Parliament and the Council, which establishes a multiannual plan for demersal stocks in the North Sea also empowers the Commission to adopt delegated acts specifying details of the landing obligation on the basis of joint recommendations developed by Member States.
- (4) Belgium, Denmark, Germany, France, the Netherlands and Sweden 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 and the United Kingdom submitted on 29 May 2019 a joint recommendation to the Commission concerning details of the implementation of the landing obligation for demersal fisheries in the North Sea. The joint recommendation was amended on 7 August 2019. Following those joint recommendations, the Commission adopted Delegated Regulation (EU) 2019/2238⁷ of 1 October 2019.

⁵ OJ L 179, 16.7.2018, p. 1.

⁶ 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).

⁷ Commission Delegated Regulation (EU) 2019/2238 of 1 October 2019 specifying details of implementation of the landing obligation for certain demersal fisheries in the North Sea for the period 2020-2021 (OJ L 336, 30.12.2019, p. 34).

- (5) On 8 November 2019 the Member States concerned and the United Kingdom submitted a new joint recommendation to correct some errors and unintentional omissions in Delegated Regulation (EU) 2019/2238.
- (6) The joint recommendation of 8 November 2019 suggested to grant the exemption for Norway lobster caught with bottom trawls equipped with a cod-end with a mesh size of at least 70 mm equipped with a species selective grid with a bar spacing of maximums 35 mm until 31 December 2021. This is an exemption with a positive scientific assessment⁸ that had also been included in previous discard plans. In 2018, the Scientific, Technical and Economic Committee for Fisheries (STECF) pointed out that the supporting scientific information for that exemption was based on a robust approach and the validation technique used in the context of the wider fleets was reasonable⁹. In spite of this positive scientific background, Commission Delegated Regulation (EU) 2019/2238 unintentionally limited that exemption until 31 December 2020, even though there were no scientific grounds for that. That exemption should therefore apply until 31 December 2021.
- (7) On the basis of the abovementioned STECF assessments, Commission Delegated Regulation (EU) 2019/2238 also included erroneously a reporting obligation to be submitted no later than 1 May 2020 for the exemption for Norway lobster caught with bottom trawls equipped with a cod-end with a mesh size of at least 70 mm equipped with a species selective grid with a bar spacing of maximums 35 mm. Hence, this exemption should be excluded from the obligation to submit additional data.
- (8) Delegated Regulation (EU) 2019/2238 contains an unintentional omission concerning the survivability exemption for catch and by-catch of plaice. The Joint Recommendation submitted on 7 August 2019 suggested an exemption for plaice caught with certain trawls targeting flatfish or roundfish, equipped with a mesh size of at least 90-99 mm and with seltra panel; or a mesh size of at least 80-99 mm. The STECF observed that survivability rates were variable between relevant studies (18-75%), with particularly lower levels registered for smaller plaice¹⁰. For this reason the exemption should have been granted only until 31 December 2020, but Article 6(4) did not specify it by error. Furthermore, the reporting obligation to present additional data should also cover this exemption.
- (9) The joint recommendation of 8 November 2019 suggested the inclusion of a *de minimis* exemption for ling caught with certain bottom trawls with a mesh size greater than or equal to 120 mm.
- (10) Commission Delegated Regulation (EU) 2018/2035 of 18 October 2018 had granted a *de minimis* exemption for ling below minimum conservation reference size caught with certain bottom trawls with a mesh size equal or greater than 120 mm in ICES subarea 4. That exemption was granted on the basis of scientific evidence provided by the Member States and endorsed by the scientific assessment¹¹. The STECF noted that it was reasonable to assume that improvements in selectivity to reduce unwanted catches of ling were technically challenging giving the morphology of ling. That

⁸ https://stecf.jrc.ec.europa.eu/c/document_library/get_file?uuid=f2e28988-14e4-4fdf-9770-0619edd32e64&groupId=43805

⁹ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf>

¹⁰ <https://stecf.jrc.ec.europa.eu/documents/43805/2537709/STECF+PLEN+19-02.pdf/0b2566fa-f07c-4215-99a7-3b7aa1a5265e>

¹¹ <https://stecf.jrc.ec.europa.eu/documents/43805/2147402/STECF+PLEN+18-02.pdf/9798bf87-66be-467a-aeb9-4950cddbdfb>

exemption was not carried over in Commission Delegated Regulation (EU) 2019/2238 due to a miscommunication between the regional group of Member States and the Commission. Therefore, Article 10 of Commission Delegated Regulation (EU) 2019/2238 should be amended to include it.

- (11) Delegated Regulation (EU) 2019/2238 should be amended accordingly.
- (12) As the measures provided for in this Regulation have a direct impact on the planning of the fishing season of Union vessels and on related economic activities, this Regulation should enter into force very shortly after its publication. Considering that Delegated Regulation (EU) 2019/2238 entered into force on 1 January 2020, this Regulation should also apply from that date,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2019/2238 is amended as follows:

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

“The exemption referred to in paragraph 1(b)(1) and (3) shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit as soon as possible and not later than on 1 May 2020, additional scientific information supporting the exemption laid down in paragraph 1(b) (1) and (3). The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information by 31 July 2020.”;
- (2) Article 6(4) is replaced by the following:

“The exemptions referred to in paragraphs 1(c) and 2 shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption laid down in paragraph 1(c) and 2. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess the provided scientific information by 31 July 2020.”;
- (3) Article 10 is amended as follows:
 - (a) in point (n), under the introductory phrase, the second subparagraph is replaced
by the following:

“the *de minimis* exemption set out in this point shall be provisionally applicable until 31 December 2020. Member States having a direct management interest shall submit, as soon as possible and not later than by 1 May 2020, additional scientific information supporting the exemption. The STECF shall assess the provided scientific information by 31 July 2020;”;
 - (b) the following point (o) is added:

“(o) in the demersal fisheries by vessels using bottom trawls (OTB, OTT, PTB) with a mesh size equal to or greater than 120 mm catching ling in Union waters of ICES subarea 4:
a quantity of ling below minimum conservation reference size, which shall not exceed 3 % of the total annual catches of ling in that fishery.”.

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 2020.

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

Done at Brussels, 28.8.2020

For the Commission
The President
Ursula VON DER LEYEN