



Brussels, 17.10.2012  
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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 2187/2005 for the conservation of fishery  
through technical measures in the Baltic Sea, the Belts and the Sound**

## EXPLANATORY MEMORANDUM

### **1. CONTEXT OF THE PROPOSAL**

The Treaty on the Functioning of the European Union (TFEU) makes a distinction between the powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act as laid down in Article 290(1) of the TFEU (delegated acts), and the powers conferred upon the Commission to adopt uniform conditions for implementing legally binding Union acts as laid down in Article 291(2) of the TFEU (implementing acts).

In the context of the alignment of Regulation (EC) No 2187/2005 to the new rules of the TFEU, powers currently conferred on the Commission by that Regulation have been re-classified into delegated measures and implementing measures.

Pursuant to Article 290 TFEU, the legislator may delegate to the Commission the task of supplementing or amending certain non-essential parts of Regulation (EC) No 2187/2005. The Commission should therefore be empowered to adopt delegated acts to amend the technical specifications of two parts of the fishing gears improving selectivity: namely the Bacoma type exit window and the netting in the codend and extension piece being turned 90° (T90 trawl). Pursuant to Article 291 TFEU, the legislator may confer implementing powers upon the Commission to ensure uniform conditions for the implementation of Regulation (EC) No 2187/2005. Implementing powers are necessary to ensure that the Commission is able to adopt a decision requiring a Member State to withdraw or modify national measures whenever these are not in accordance with the Regulation (EC) No 2187/2005.

### **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

There was no need for consultation of interested parties or for an impact assessment.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

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

The main legal action is to identify the powers conferred upon the Commission by Council Regulation (EC) No 2187/2005 and to classify these as delegated or implementing powers.

#### **• Legal basis**

Article 43(2) of the Treaty on the Functioning of the European Union.

#### **• Subsidiarity principle**

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

- **Proportionality principle**

The proposal covers amending measures which already exist in Council Regulation (EC) No 2187/2005; therefore no concern arises as regards the principle of proportionality.

- **Choice of instrument**

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: a Regulation must be amended by a Regulation.

#### **4. BUDGETARY IMPLICATION**

This measure does not involve any additional Union expenditure.

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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,

Having regard to the opinion of the 'European Economic and Social Committee'<sup>1</sup>,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery through technical measures in the Baltic Sea, the Belts and the Sound<sup>2</sup> confers powers upon the Commission in order to implement some of the provisions of that Regulation.
- (2) As a consequence of the entry into force of the Lisbon Treaty, the powers conferred upon the Commission under Regulation (EC) No 2187/2005 need to be aligned to Articles 290 and 291 of the Treaty on the Functioning of the European Union.
- (3) Implementing powers should be conferred on the Commission in order to ensure uniform conditions for the implementation of Regulation (EC) No 2187/2005 as regards measures taken by Member States which apply only to fishing vessels flying their flag.
- (4) Powers to adopt detailed rules for the implementation of Regulation (EC) No 2187/2005 are no longer required. The provision conferring those powers should therefore be deleted.
- (5) The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend rules concerning the construction of the certain gears. Such amendments should reflect changes occurring in the selectivity patterns of the fishery, new technical knowledge on materials for construction or changes in the rigging of the gear which may enhance gear selectivity.

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<sup>1</sup>

<sup>2</sup> OJ L 349, 31.12.2005, p. 1.

(6) It is of particular importance that the Commission should carry out appropriate consultations during its preparatory work for the adoption of delegated acts, including at expert level. When preparing and drawing-up delegated acts, the Commission should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

(7) Regulation (EC) No 2187/2005 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 2187/2005 is amended as follows:

(1) In Article 26, paragraph 5 is replaced by the following:

"5. If the Commission concludes that the measures do not comply with the conditions laid down in paragraph 1 it shall adopt an implementing decision requiring the Member State to withdraw or modify the measures."

(2) Article 28 is deleted.

(3) Article 29 is replaced by the following:

*"Article 29*

**Amendments to Appendices 1 and 2 of Annex II**

The Commission shall be empowered to adopt delegated acts in accordance with Article 29a to amend or supplement Appendices 1 and 2 of Annex II by adapting specifications of the gear to:

- (a) changes in selectivity;
- (b) improvements in technical knowledge on new materials for gear construction;
- (c) changes to rigging that enhance gear selectivity."

(4) The following Article 29a is inserted:

*"Article 29a*

*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 delegation of powers referred to in Article 29 shall be conferred for an indeterminate period of time.

3. The delegation of powers referred to in Article 29 may be revoked by the European Parliament or by the Council at any time. A decision of revocation shall put an end to the

delegation of the power specified in that decision. It shall take effect on 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 the Commission adopts a delegated act, it shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 29 shall enter into force only if no objection has been expressed either by the European Parliament or by 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 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 Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*