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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: REPORT FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT in respect of the delegation of powers referred
to in Article 11(2), Article 15(2), (3), (6), (7) and Article 45(4) of Regulation
(EU) No 1380/2013 of the European Parliament and of the Council of 11
December 2013 on the Common Fisheries Policy

Delegations will find attached document COM(2018) 79 final.

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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**in respect of the delegation of powers referred to in Article 11(2), Article 15(2), (3), (6),
(7) and Article 45(4) of Regulation (EU) No 1380/2013 of the European Parliament and
of the Council of 11 December 2013 on the Common Fisheries Policy**

1. Introduction

Regulation (EU) No 1380/2013¹, as amended by Regulation (EU) 2017/2092² (the "CFP Regulation") covers (a) the conservation of marine biological resources and the management of fisheries and fleets exploiting such resources and (b) in relation to measures on markets and financial measures in support of the implementation of the CFP: fresh water biological resources, aquaculture and the processing and marketing of fisheries and aquaculture products.

For the purposes of achieving the objectives of Regulation (EU) N° 1380/2013, and in particular of ensuring that fishing and aquaculture activities are environmentally and socio-economically sustainable in the long term, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union is delegated to the Commission in respect of conservation measures accompanying certain environmental obligations by Member States, the implementation of the landing obligation and the establishment of detailed rules on the functioning of the Advisory Councils, stakeholders' organisations created to provide Commission and Member States recommendations and information on matters relating to the management of fisheries and the socio-economic and conservation aspects of fisheries and aquaculture.

Article 46 of the CFP Regulation sets the conditions to which the power of the Commission to adopt delegated acts is subject to.

2. Legal Basis

This report is required under Article 46(2) of the CFP Regulation. According to this provision, the powers to adopt delegated acts referred to in Article 11(2), in Article 15(2), (3), (6), (7) and Article 45(4) are conferred on the Commission for a period of five years from 29 December 2013. The Commission is required to prepare a report in respect of the delegation of powers not later than nine months before the end of the five-year period. The delegated powers shall be automatically extended for five-year periods, unless the European Parliament or the Council opposes such extension in accordance with Article 46 of the CFP Regulation.

The CFP Regulation empowers the Commission to adopt delegated acts in respect of:

- a) Conservation measures necessary for compliance with certain obligations under Union environmental legislation (Article 11(2) of the CFP Regulation);
- b) Implementing the Union's international obligations into Union law, including, in particular derogations from the landing obligation (Article 15(2) of the CFP Regulation);

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) 2017/2092 of the European Parliament and of the Council of 15 November 2017 amending Regulation (EU) No 1380/2013 on the common fisheries policy, (OJ L 302, p. 1)

c) Extending the application of the landing obligation to species other than those listed in Article 15(1) where a joint recommendation for this purpose is submitted to the Commission (Article 15(3) of the CFP Regulation);

d) Establishing specific temporary discard plans containing, *inter alia*, *de minimis* and high survivability exemptions from the landing obligation for a temporary period of no more than three years that may be renewed for a further total period of three years, where no multiannual plan or no management plan is adopted for the fishery in question (Article 15(6) of the CFP Regulation);

e) Setting *de minimis* exemptions from the landing obligation of no more than 5% of total annual catches of all species to which the landing obligation applies under Article 15(1), where no measures have been adopted for this purpose either in a multiannual plan or in a specific discard plan (Article 15(7) of the CFP Regulation); and

f) Laying down detailed rules on the functioning of Advisory Councils (Article 45(4) of the CFP Regulation).

Delegated acts with similar content adopted on the basis of Regulations other than the CFP Regulation are not covered by this report. This is in particular the case for delegated acts containing measures to implement the landing obligation adopted on the basis of Article 7 of Regulation (EU) 2016/1139 (the "Baltic Multi-annual Plan")³. The Commission will draw a report in respect of the delegation of powers conferred to it by the Baltic Multi-annual plan under the conditions set in this plan.

3. Exercise of the Delegation of Powers

3.1. Procedural Aspects

The exercise of the delegated powers conferred on the Commission by Article 11(2) and Article 15(3) and (6) of the CFP Regulation is subject to regionalisation: Member States having a direct management interest affected by the measures concerned may agree to submit joint recommendations for achieving the objectives of the relevant Union conservation measures or the specific discard plan. When shaping joint recommendations for Commission delegated acts under regionalisation, Member States have to consult the relevant Advisory Councils. If Member States do not succeed in agreeing on joint recommendations or if the joint recommendations are deemed not to be compatible with the objectives and quantifiable targets of the conservation measures in question, the Commission cannot exercise its delegated powers but may submit a proposal for appropriate measures in accordance with the Treaty.

The draft delegated acts based on Articles 11(2) and 15(3), (6) and (7) of the CFP Regulation have all been submitted to the Scientific, Technical and Economic Committee for Fisheries

³ Regulation (EU) 2016/1139 of the European Parliament and of the Council of 6 July 2016 establishing a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea and the fisheries exploiting those stocks, amending Council Regulation (EC) No 2187/2005 and repealing Council Regulation (EC) No 1098/2007 (OJ L 191, 15.7.2016, p. 1).

(STECF) established by Commission Decision 2005/629/EC⁴ to take into account the best available scientific advice.

The draft delegated acts laying down detailed rules on the functioning of the Advisory Council were submitted to all the Advisory Councils that were operational at the moment for their views. They were also discussed during the regular coordination meetings that the Commission is holding with all the Advisor Councils (Inter-AC coordination meetings).

Finally the draft delegated acts based on the empowerments included in the CFP Regulation have all been submitted to the Expert Group for Fisheries and Aquaculture, established to ensure appropriate expert consultation for the preparation of delegated acts. The European Parliament has been systematically invited to the meetings of this Expert Group, but their participation has so far been limited. The documents relevant to these consultations were transmitted simultaneously to the European Parliament and to the Council, as foreseen in the Common Understanding on delegated acts. After adoption, the delegated acts were all notified to the European Parliament and to the Council. To date, no delegated act adopted by the Commission under the CFP Regulation has been objected by the European Parliament or the Council within the period of 2 months provided for in Article 46(5) of the CFP Regulation. In some cases, however, the European Parliament has requested the extension of the deadline for an additional 2 months period.

3.2. List of Delegated Acts adopted under the CFP Regulation

The list of all the delegated acts that were adopted by the Commission since the entry into force of the CFP Regulation is presented below. These delegated acts are classified on the basis of their legal status (in force, under scrutiny and repealed or expired). The list was last updated and reflects the state of play on the 1 December 2017.

3.2.1. Delegated Acts in Force

a) Under Article 11(2) of the CFP Regulation

- **Commission Delegated Regulation (EU) 2017/117** of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778⁵;
- **Commission Delegated Regulation (EU) 2017/118** of 5 September 2016 establishing fisheries conservation measures for the protection of the marine environment in the North Sea⁶;
- **Commission Delegated Regulation (EU) 2017/1180** of 24 February 2017 amending Delegated Regulation (EU) 2017/118 establishing fisheries conservation measures for the protection of the marine environment in the North Sea⁷;
- **Commission Delegated Regulation (EU) 2017/1181** of 2 March 2017 amending Delegated - Regulation (EU) 2017/117 establishing fisheries conservation measures for the protection of the marine environment in the Baltic Sea and repealing Delegated Regulation (EU) 2015/1778⁸.

b) Under Article 15(2) of the CFP Regulation

⁴ Commission Decision 2005/629/EC of 26 August 2005 establishing a Scientific, Technical and Economic Committee for Fisheries (OJ L 225, 31.8.2005, p. 18).

⁵ OJ L 19, 25.1.2017, p. 1.

⁶ OJ L 19, 25.1.2017, p. 19.

⁷ OJ L 171, 4.7.2017, p. 1.

⁸ OJ L 171, 4.7.2017, p. 30.

- **Commission Delegated Regulation (EU) 2015/98** of 18 November 2014 on the implementation of the Union's international obligations, as referred to in Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, under the International Convention for the Conservation of Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries⁹;
- **Commission Delegated Regulation (EU) 2016/171** of 20 November 2015 amending Delegated Regulation (EU) 2015/98 on the implementation of the Union's international obligations, as referred to in Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, under the International Convention for the Conservation of Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries¹⁰;
- **Commission Delegated Regulation (EU) 2017/1352** of 18 April 2017 amending Commission Delegated Regulation (EU) 2015/98 on the implementation of the Union's international obligations, as referred to in Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, under the International Convention for the Conservation of the Atlantic Tunas and the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries¹¹.

c) Under Article 15(3), (6) of the CFP Regulation

- **Commission Delegated Regulation (EU) No 1392/2014** of 20 October 2014 establishing a discard plan for certain small pelagic fisheries in the Mediterranean Sea¹² (expiration date: 31 December 2017);
- **Commission Delegated Regulation (EU) No 1393/2014** of 20 October 2014 establishing a discard plan for certain pelagic fisheries in north-western waters¹³ (expiration date: 31 December 2017);
- **Commission Delegated Regulation (EU) No 1394/2014** of 20 October 2014 establishing a discard plan for certain pelagic fisheries in south-western waters¹⁴ (expiration date: 31 December 2017);
- **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 Sea¹⁵ (expiration date: 31 December 2017);
- **Commission Delegated Regulation (EU) No 1396/2014** of 20 October 2014 establishing a discard plan in the Baltic Sea¹⁶ (expiration date: 31 December 2017);
- **Commission Delegated Regulation (EU) 2016/2250** of 4 October 2016 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa¹⁷ (expiration date: 31 December 2018);
- **Commission Delegated Regulation (EU) 2016/2374** of 12 October 2016 establishing a discard plan for certain demersal fisheries in South-Western waters¹⁸ (expiration date: 31 December 2018);

⁹ OJ L 16, 23.1.2015, p. 23.

¹⁰ OJ L 33, 10.2.2016, p. 1.

¹¹ OJ L 190, 21.7.2017, p. 1.

¹² OJ L 370, 30.12.2014, p. 21.

¹³ OJ L 370, 30.12.2014, p. 25.

¹⁴ OJ L 370, 30.12.2014, p. 31.

¹⁵ OJ L 370, 30.12.2014, p. 35.

¹⁶ OJ L 370, 30.12.2014, p. 40.

¹⁷ OJ L 340, 15.12.2016, p. 2.

¹⁸ OJ L 352, 23.12.2016, p. 33.

- **Commission Delegated Regulation (EU) 2016/2375** of 12 October 2016 establishing a discard plan for certain demersal fisheries in North-Western waters¹⁹ (expiration date: 31 December 2018);
- **Commission Delegated Regulation (EU) 2016/2376** of 13 October 2016 establishing a discard plan for mollusc bivalve *Venus* spp. in the Italian territorial waters²⁰ (expiration date: 31 December 2019);
- **Commission Delegated Regulation (EU) 2016/2377** of 14 October 2016 amending Delegated Regulation (EU) No 1394/2014 establishing a discard plan for certain pelagic fisheries in South-Western waters²¹;
- **Commission Delegated Regulation (EU) 2017/86** of 20 October 2016 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea²² (expiration date: 31 December 2019);
- **Commission Delegated Regulation (EU) 2017/87** of 20 October 2016 establishing a discard plan for turbot fisheries in the Black Sea²³ (expiration date: 31 December 2019);
- **Commission Delegated Regulation (EU) 2017/1393** of 24 May 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 Sea²⁴ (expiration date: 31 December 2017);
- **Commission Delegated Regulation (EU) 2017/2167** of 5 July 2017 amending Delegated Regulation (EU) 2016/2374 establishing a discard plan for certain demersal fisheries in South-Western waters²⁵ (expiration date: 31 December 2018).

d) Under Article 15(7) of the CFP Regulation
None yet

- e) Under Article 45(4) of the CFP Regulation
- **Commission Delegated Regulation (EU) 2015/242** of 9 October 2014 laying down detailed rules on the functioning of the Advisory Councils under the Common Fisheries Policy²⁶;
 - **Commission Delegated Regulation (EU) 2017/1575** of 23 June 2017 amending Delegated Regulation (EU) 2015/242 laying down detailed rules on the functioning of the Advisory Councils under the common fisheries policy²⁷.

3.2.2. Delegated Acts Adopted by the Commission but not yet in Force (under scrutiny)

a) Under Article 11(2) of the CFP Regulation
None

- b) Under Article 15(2) of the CFP Regulation
- Commission delegated Regulation (EU) No.../... amending Commission Delegated Regulation (EU) 2015/98 on the implementation of the Union's international obligations, as referred to in Article 15(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council, under the International Convention for the Conservation of Atlantic Tunas, regarding the Mediterranean stock of swordfish, adopted on 30/11/2017.

¹⁹ OJ L 352, 23.12.2016, p. 39.

²⁰ OJ L 352, 23.12.2016, p. 48.

²¹ OJ L 352, 23.12.2016, p. 50.

²² OJ L 14, 18.1.2017, p. 4.

²³ OJ L 14, 18.1.2017, p. 9.

²⁴ OJ L 197, 28.7.2017, p. 1.

²⁵ OJ L 306, 22.11.2017, p. 2.

²⁶ OJ, L 41, 17.2.2015, p.1.

²⁷ OJ L 239, 19.9.2017, p. 1.

c) Under Article 15(3), (6) of the CFP Regulation

- Commission Delegated Regulation (EU) No .../... establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES division IIa for the year 2018, adopted on 20/10/2017;
- Commission Delegated Regulation (EU) No .../... amending Delegated Regulation (EU) 2016/2374 establishing a discard plan for certain demersal fisheries in South-Western waters; adopted on 20/10/2017;
- Commission Delegated Regulation (EU) No .../... establishing a discard plan for certain demersal and deep sea fisheries in North-Western waters for the year 2018, adopted on 20/10/2017;
- Commission Delegated Regulation (EU) No .../... amending Delegated Regulation (EU) 2017/86 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea, adopted on 23/10/2017;
- Commission Delegated Regulation (EU) No .../.. establishing a discard plan as regards salmon in the Baltic Sea, adopted on 21/11/2017;
- Commission Delegated Regulation (EU) No.../... amending Delegated Regulation (EU) No 1394/2014 establishing a discard plan for certain pelagic fisheries in South-Western waters, adopted on 21/11/2017;
- Commission Delegated Regulation (EU) No .../... 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, adopted on 23/11/2017;
- Commission Delegated Regulation (EU) No .../.. amending Delegated Regulation (EU) No 1393/2014 establishing a discard plan for certain pelagic fisheries in North-Western waters, adopted on 24/11/2017.

d) Under Article 15(7) of the CFP Regulation

- Commission Delegated Regulation (EU) No .../.. establishing a *de minimis* exemption to the landing obligation for certain small pelagic fisheries in the Mediterranean Sea, adopted on 23/10/2017.

e) Under Article 45(4) of the CFP Regulation

None

3.2.3. *Delegated Acts Repealed or Expired*

a) Under Article 11(2) of the CFP Regulation

- **Commission Delegated Regulation (EU) 2015/1778** of 25 June 2015 establishing fisheries conservation measures to protect reef zones in waters under the sovereignty of Denmark in the Baltic Sea and Kattegat²⁸, repealed by Commission Delegated Regulation (EU) 2017/1181.

b) Under Article 15(2) of the CFP Regulation

None

c) Under Article 15(3), (6) of the CFP Regulation

²⁸ OJ L 259, 6.10.2015, p. 5.

- **Commission Delegated Regulation (EU) 2015/2438** of 12 October 2015 establishing a discard plan for certain demersal fisheries in north-western waters²⁹, repealed by Commission Delegated Regulation 2016/2375 as of 1 January 2017;
- **Commission Delegated Regulation (EU) 2015/2439** of 12 October 2015 establishing a discard plan for certain demersal fisheries in south-western waters³⁰, repealed by Commission Delegated Regulation (EU) 2016/2374 as of 1 January 2017;
- **Commission Delegated Regulation (EU) 2015/2440** of 22 October 2015 establishing a discard plan for certain demersal fisheries in the North Sea and in Union waters of ICES Division IIa³¹, expired on the 31 December 2016.

d) Under Article 15(7) of the CFP Regulation
None

e) Under Article 45(4) of the CFP Regulation
None

4. Conclusion

The Commission considers that it has exercised its delegated powers within the remit conferred to it by Regulation (EU) No 1380/2013.

The delegation of powers conferred by Article 11(2), Article 15(2), (3), (6), (7) and Article 45(4) of Regulation 1380/2013 should be extended in accordance with Article 46(2) of the same Regulation, to contribute to the achievement of its objectives.

The Commission invites the European Parliament and the Council to take note of this report.

²⁹ OJ L 336, 23.12.2015, p. 29.

³⁰ OJ L 336, 23.12.2015, p. 36.

³¹ OJ L 336, 23.12.2015, p. 42.