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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2020) 666 final.

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2020/0301 (NLE)

Proposal for a

COUNCIL REGULATION

fixing for 2021 and 2022 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

1.1.1. General context

Fishing for deep-sea species has been regulated in the EU since 2003 in terms of total allowable catches (TACs) per species and area, and in terms of maximum fishing capacity deployable in the North-East Atlantic. For 2019 and 2020 the total allowable catches of certain deep-sea species were established in Council Regulation (EU) No 2018/2025 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks[1].

The fixing and sharing of fishing opportunities falls exclusively within the competence of the Union. The obligations concerning sustainable exploitation of living aquatic resources are set out in Article 2 of Regulation (EU) No 1380/2013. In particular, Article 2(2) of that Regulation establishes a precautionary approach to fisheries management (as defined in Article 4(1)(8) thereof) and provides that the Common Fisheries Policy shall aim at restoring and maintaining maximum sustainable yield (MSY). Furthermore, in accordance with Article 16(4) of that Regulation, fishing opportunities must be fixed in accordance with the objectives of Article 2(2).

However, it also features fishing opportunities resulting from multilateral or bilateral fisheries consultations. The outcome is implemented by providing for internal allocation among Member States based on the principle of relative stability.

The transition period set out in the EU-United Kingdom withdrawal agreement expires at the end of 2020, after the UK has indicated it has no interest in its further extension. The stocks for which the Commission will need to consult with the UK on quota shares for fishing opportunities for 2021 and 2022 are therefore presented as pro memoria, pending the outcome of the ongoing negotiations regarding the cooperation on these stocks, including fishing opportunities, quota shares and access to the UK waters.

For other shared stocks or fishing opportunities exchanged with third countries, the figures are not available yet, pending the conclusion of consultations with those third countries. When these consultations are concluded, the proposal will be supplemented with non-papers.

Furthermore, deep-sea fishing opportunities should be established in accordance with international agreements, inter alia the 1995 United Nations agreement concerning the conservation and management of straddling fish stocks and highly migratory fish stocks ("the 1995 UN Fish Stocks Agreement"). In particular, caution is important when information is uncertain, unreliable or inadequate. Pursuant to Article 6(2) of the 1995 UN Fish Stocks Agreement the absence of adequate scientific information is not to be used as a reason for postponing or failing to take conservation and management measures. The TACs proposed also follow the 2008 International Guidelines for the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organisation of the United Nations, which have

[1] Council Regulation (EU) No 2018/2025 of 17.12.2018, fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks (OJ L 325; 20.12.2018, p. 7).

been confirmed by successive Resolutions of the UN General Assembly (Resolutions 61/105 in 2007, 64/72 in 2009, and most recently, 70/235 in 2015).

1.1.2. Landing obligation introduced by Regulation (EU) No 1380/2013

The landing obligation, established by the Basic Regulation of the CFP, was introduced progressively from 2015 to 2019. As from 1 January 2019, all stocks under catch limits are subject to the landing obligation. Certain exceptions from the landing obligation provided for in the Basic Regulation may apply. Based on the joint recommendations submitted by the Member States, the Commission adopted Delegated Regulations laying down specific discard plans, which allow limited quantities of discards to occur on the basis of de minimis or high survivability exemptions.

With the introduction of the landing obligation, and in accordance with Article 16(2) of Regulation (EU) No 1380/2013, the fishing opportunities proposed have to reflect the change from amount landed to amount caught, taking into account that discards are no longer allowed. This is done on the basis of the received scientific advice for the fish stocks in fisheries referred to in Article 15(1) of the Basic Regulation of the CFP. The fishing opportunities should also be fixed in accordance with other relevant provisions, i.e. Articles 16(1) (referring to the principle of relative stability) and 16(4) (referring to the objectives of the Common Fisheries Policy and the rules provided for in multiannual plans).

Therefore, to take account of the full application of the landing obligation, the Commission proposes TACs on the basis of catch advice instead of previously used landings advice. The proposed Union quotas take account of the fact that certain limited discards based on established exemptions will occur, and thus will not be landed and counted against the quotas. Therefore, these amounts are deducted from the Union quotas.

1.1.3. Existing provisions in the area of the proposal

The existing provisions in the area of the proposal are established in Council Regulation (EU) No 2018/2025 and applicable until 31 December 2020. Furthermore specific conditions for fishing deep-sea stocks in the North-East Atlantic are established in Regulation (EU) No 2016/2336 of the European Parliament and the Council.

The Western Waters Management Plan (Regulation (EU) 2019/472), which covers some of the stocks subject to this regulation, applies to:

– Roundnose grenadier in ICES subarea 6, 7 and 5b,

– Black scabbardfish in ICES subarea 1, 2, 4, 6-8, 10, 14, and divisions 3a, 5a, 5b, 9a and 12b, and

– Red seabream in ICES subarea 9

1.1.4. Consistency with existing policy provisions in the policy area

The measures proposed are designed in accordance with the objectives and the rules of the Common Fisheries Policy and are consistent with the Union's policy on sustainable development, in particular Regulation (EU) No 2016/2336, establishing specific conditions for fishing for deep-sea stocks in the North-East Atlantic.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. • Legal basis

The TFEU establishes under Article 43(3) that the Council shall adopt measures "on the fixing and allocation of fishing opportunities" on a proposal from the Commission. This proposal is limited to the fixing and allocation of fishing opportunities and conditions functionally linked to the use of those fishing opportunities.

Therefore, this proposal puts forward, by way of a Council Regulation the catch limitations for Union fishing fleets concerning the commercially most important deep-sea species in Union and international waters of the North-East Atlantic, in order to achieve the objective of the Common Fisheries Policy of ensuring fisheries at levels that are environmentally, economically and socially sustainable. The proposal falls under the Union exclusive competence as referred to in Article 3(1)(d) TFEU. The subsidiarity principle therefore does not apply.

2.2. Proportionality

The proposal complies with the proportionality principle for the following reason: the Common Fisheries Policy is a common policy. According to Article 43(3) TFEU it is incumbent upon the Council to adopt the measures on the fixing and allocation of fishing opportunities.

Having regard to Article 16(6) of Regulation (EU) No 1380/2013 Member States are free to allocate fishing opportunities, when they are not subject to a system of transferable fishing concessions, among regions or operators in line with Article 16(7) and the criteria set out in Article 17. Therefore, Member States have room for manoeuvre on decisions related to the social/economic model of their choice to exploit their allocated fishing opportunities.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. Stakeholder consultations

The proposal has been developed based on the principles and guidance set out in the Communication from the Commission towards more sustainable fishing in the EU: state of play and orientations for 2021[2]. In the context of that Communication the Commission carried out a wide consultation of stakeholders, civil society, Member States and the public at large[3].

4. BUDGETARY IMPLICATIONS

The proposal has no new financial implications for Member States. This Regulation is adopted by Council every two years, and the public and private means to implement it are already in place.

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[2] Communication from the Commission to the European Parliament and the Council towards more sustainable fishing in the EU - state of play and orientations for 2021 (COM(2020) 248).

[3] https://ec.europa.eu/info/consultations/fishing-opportunities-2021-under-common-fisheries-policy_en

5. OTHER ELEMENTS

5.1. Detailed explanation of the specific provisions of the proposal

In all stocks covered in this proposal available information does not allow scientists to fully assess the stock status, neither in terms of population size nor fishing mortality. There are several reasons for this: these species are often very long-lived and slow-growing, making it extremely difficult to structure the stock into age classes and to assess the effect of fishing on the stock through changes in the length or age structure of catches. The frequency of recruitment of young fish to the stocks is not known. The stocks are widely distributed in depths that are difficult to examine for practical reasons. Data from scientific surveys are often not available due to the reduced commercial importance of these stocks, or do not cover the whole distribution area. Fishing activities are sometimes only partly focusing on these species and some fisheries have a relatively short history.

The catch limits proposed are coherent with the principles set out in the Communication from the Commission concerning a Consultation on Fishing Opportunities for 2021 mentioned above. This Communication sets out the Commission's views on how to establish fishing opportunities, and such rules have been followed in the development of this proposal in respect of the TAC entries. The proposal contains the following:

- Taking into account, where relevant, the landing obligation.
- Where indicative scientific advice is provided based on qualitative analysis of available information (even if this is incomplete or incorporates expert judgement) this should be used as a basis for TAC decisions. TACs for stocs share with third countries should be set in "*pm*" (*pro memoria*) until the fishing opportunities with the relevant third countries are agreed. The proposal contains three TACs with reductions for 2021 and a roll over for 2022. One TAC is a delegated TAC to Portugal.
- Given the bad biological state of the stocks of deep-sea sharks, they should remain prohibited.
- The fishing, retaining on board, transhipping and landing of orange roughy should remain prohibited. The stock is depleted and is not recovering. ICES notes that there have been no directed EU fisheries in the Northeast Atlantic since 2010.

5.2. The levels of proposed TACs and explanation

When the Western Waters Multiannual Plan was adopted, the Commission made a statement that, where the Commission proposes setting TACs that deviate by more than 20% from the previously established TAC level, these cases will be listed in the explanatory memorandum of the Commission Proposal, providing, where appropriate, the underlying reasons for the TAC variations. The Commission has decided to provide such overview for all TACs included in its proposal.

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TAC	Sea Area Name	Proposed TAC for 2021	Proposed TAC for 2022	Proposal TAC change from 2020	Explanation
Black scabbardfish in Union and international waters of 8, 9, 10	Bay of Biscay, Portuguese Waters, Azores Grounds	2113	2113	-25%	The Commission proposes to decrease the TAC in line with the scientific advice. However the proposal for subarea 10 was reduced to only 29 t instead of 280 as advised by ICES to reflect 2019 uptake.
Roundnose Grenadier in 3	Skagerrak and Kattegat	5	5	-90%	This is a by-catch TAC with a 0 catch advice. The Commission proposes to reduce the by-catch quota to follow direction of the scientific advice, as the risk of creating a choke effect is lower than previously considered.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.

(2) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[4] requires that conservation measures be adopted taking into account available scientific, technical and economic advice, including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF).

(3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities, including certain conditions functionally linked thereto, as appropriate. Fishing opportunities should be distributed among Member States in such a way as to assure each Member State relative stability of fishing activities for each stock or fishery and having due regard to the objectives of the Common Fisheries Policy (CFP) established by Regulation (EU) No 1380/2013.

(4) The total allowable catches ('TACs') should be established on the basis of available scientific advice[5], taking into account biological and socioeconomic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders, and in particular the advisory councils concerned.

(5) For stocks for which there is no sufficient or reliable data in order to provide size estimates, management measures and TAC levels should follow the precautionary approach to fisheries management as defined in point (8) of Article 4(1) of Regulation

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4 Regulation (EU) No 1380/2013 of 11 December 2013 of the European Parliament and of the Council 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).

5 http://www.ices.dk/advice/Pages/Latest-Advice.aspx

(EU) No 1380/2013, while taking into account stock-specific factors, including, in particular, available information on stock trends and mixed fisheries considerations.

(6) Where a TAC relating to a stock is allocated to one Member State only, it is appropriate to empower that Member State in accordance with Article 2(1) of the Treaty to determine the level of such TAC. Provisions should be made to ensure that, when fixing that TAC level, the Member State concerned acts in a manner fully consistent with the principles and rules of the CFP.

(7) For certain TACs, shared quotas are available for Member States without an allocated quota, i.e.'Others'. Member States having used this shared quota may later obtain a quota of their own, e.g. through an exchange. When reporting catches to the Commission, Member States should make the distinction between the catches to be counted against their own quota and those, within the same TAC, to be counted against the shared quota. To allow this distinction, a separate reporting code should be introduced.

(8) Council Regulation (EC) No 847/96[6] introduced additional conditions for year-to-year management of TACs including, under Articles 3 and 4 of that Regulation, flexibility provisions for precautionary and analytical TACs. Under Article 2 of that Regulation, when fixing the TACs, the Council is to decide to which stocks Article 3 or 4 of that Regulation is not to apply, in particular on the basis of the biological status of the stocks. In 2014, a further year-to-year flexibility mechanism was introduced by Article 15(9) of Regulation (EU) No 1380/2013 for all stocks that are subject to the landing obligation. Therefore, in order to avoid excessive flexibility that would undermine the principle of rational and responsible exploitation of marine biological resources, hinder the achievement of the objectives of the CFP and deteriorate the biological status of the stocks, it should be established that Articles 3 and 4 of Regulation (EC) No 847/96 apply to analytical TACs only where the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013 is not used.

(9) In accordance with Article 15 of Regulation (EU) No 1380/2013, the landing obligation applies fully from 1 January 2019 and all species subject to catch limits are to be landed. Article 16(2) of Regulation (EU) No 1380/2013 provides that, when the landing obligation in respect of a fish stock applies, fishing opportunities are to be fixed taking into account the change from fixing fishing opportunities that reflect landings to fixing fishing opportunities that reflect catches. On the basis of the joint recommendations submitted by the Member States and in accordance with Article 15 of Regulation (EU) No 1380/2013 and Article 13 of Regulation (EU) No 2019/472, the Commission adopted a number of delegated Regulations laying down details for the implementation of the landing obligation in the form of specific discard plans.

(10) The fishing opportunities for stocks of species falling under the landing obligation should take into account the fact that discarding is in principle no longer allowed. Therefore, the fishing opportunities should be based on the advice figure for total catches (instead of the advice figure for wanted catches), as provided by the International Council for the Exploration of the Sea (ICES). The amounts that, by way of exception, may continue to be discarded during the operation of the landing obligation should be deducted from that advice figure for total catches.

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[6] Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

(11) Fishing opportunities should be in accordance with international agreements and principles, such as the 1995 United Nations agreement concerning the conservation and management of straddling stocks and highly migratory fish stocks[7], and the detailed management principles laid down in the 2008 International Guidelines for the Management of Deep-sea Fisheries in the High Seas of the Food and Agriculture Organization of the United Nations, according to which, in particular, a regulator should be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures.

(12) Where a TAC relating to a stock is allocated to one Member State only, it is appropriate to empower that Member State, in accordance with Article 2(1) of the Treaty, to determine the level of such TAC. Provisions should be made to ensure that, when fixing that TAC level, the Member State concerned acts in a manner fully consistent with the principles and rules of the Common Fisheries Policy.

(13) Catches of red seabream are made in the areas of the Fishery Committee for the Eastern Central Atlantic (CECAF) and General Fisheries Commission for the Mediterranean (GFCM), which border on ICES subarea 9. Given that ICES data for those adjacent areas are incomplete, the scope of the TAC should remain limited to ICES subarea 9.

(14) ICES advises not to have catches of orange roughy until 2024. It is appropriate for the fishing, retaining on board, transhipping and landing of that species to remain prohibited, as the stock is depleted and is not recovering. ICES notes that there have been no directed Union fisheries for orange roughy in the North-East Atlantic since 2010.

(15) ICES advises to minimise the fishing mortality of deep-sea sharks. The deep-sea sharks are long-lived species with low reproductive rates and have quickly become overexploited. Fishing opportunities for such species should therefore remain fully restricted through a general prohibition on fishing those species.

(16) In order to avoid the interruption of fishing activities and to ensure the livelihood of the fishermen of the Union, this Regulation should apply from 1 January 2021. In order to allow the Member States to ensure a timely application of this Regulation it should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation fixes for the years 2021 and 2022 annual fishing opportunities available to Union fishing vessels for fish stocks of certain deep-sea species in Union waters and in certain non-Union waters where catch limits are required.

[7] Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks (OJ L 189, 3.7.1998, p. 16).

Article 2
Definitions

1. For the purposes of this Regulation, the definitions referred to in Article 4 of Regulation (EU) No 1380/2013 shall apply. In addition, the following definitions shall apply:

(a) 'total allowable catch' (TAC) means:

(i) in fisheries subject to the exemption of the landing obligation referred to in Article 15 (4) to (7) of Regulation (EU) No 1380/2013, the quantity of fish that may be landed from each stock each year;

(ii) in all other fisheries, the quantity of fish that may be caught from each stock each year;

(b) 'quota' means a proportion of the TAC allocated to the Union or a Member State;

(c) 'international waters' means waters falling outside the sovereignty or jurisdiction of any State;

(d) 'analytical assessment' means quantitative evaluations of trends in a given stock, based on data about the stock's biology and exploitation, which scientific review has indicated to be of sufficient quality to provide scientific advice on options for future catches;

(e) 'International Council for the Exploration of the Sea zones' (ICES zones) means the geographical areas specified in Annex III to Regulation (EC) No 218/2009 of the European Parliament and of the Council[8];

(f) 'Committee for Eastern Central Atlantic Fisheries zones' (CECAF areas) means the geographical areas specified in Annex II to Regulation (EC) No 216/2009 of the European Parliament and of the Council[9];

(g) 'deep-sea sharks' means the species listed in Point 2 of Part 1 of the Annex to this Regulation.

Article 3
TACs and allocations

The TACs for deep-sea species caught by Union fishing vessels in Union waters or in certain non-Union waters, the allocation of such TACs among Member States and the conditions functionally linked thereto, where appropriate, are set out in the Annex.

[8] Regulation (EC) No 218/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in the north-east Atlantic (OJ L 87, 31.3.2009, p. 70).

[9] Regulation (EC) No 216/2009 of the European Parliament and of the Council of 11 March 2009 on the submission of nominal catch statistics by Member States fishing in certain areas other than those of the North Atlantic (OJ L 87, 31.3.2009, p. 1).

Article 4

TACs to be determined by Member States

1. The TAC for black scabbardfish in CECAF area 34.1.2 shall be determined by Portugal. This stock is identified in the Annex to this Regulation.

2. The TAC to be determined by Portugal shall:

   (a) be consistent with the principles and rules of the common fisheries policy, in particular the principle of sustainable exploitation of the stock; and

   (b) result:

      (i) if analytical assessments are available, in the exploitation of the stock consistent with maximum sustainable yield from 2019 onwards; with as high a probability as possible;

      (ii) if analytical assessments are unavailable or incomplete, in the exploitation of the stock consistent with the precautionary approach to fisheries management.

3. By 15 March of each year, Portugal shall submit the following information to the Commission:

   (a) the TAC adopted;

   (b) the data collected and assessed by Portugal on which the TAC adopted is based;

   (c) details on how the TAC adopted comply with paragraph 2.

Article 5

Special provisions on the allocation of fishing opportunities

1. The allocation of fishing opportunities among Member States as set out in this Regulation shall be without prejudice to:

   (a) exchanges made pursuant to Article 16(8) of Regulation (EU) No 1380/2013;

   (b) deductions and reallocations made pursuant to Article 37 of Council Regulation (EC) No 1224/2009[10];

   (c) reallocations made pursuant to Article 12(7) of Regulation (EU) No 2017/2403[11] of the European Parliament and of the Council;

[10] Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

(d) additional landings allowed under Article 3 of Regulation (EC) No 847/96 and 15(9) of Regulation (EU) No 1380/2013;

(e) quantities withheld in accordance with Article 4 of Regulation (EC) No 847/96 and Article 15(9) of Regulation (EU) No 1380/2013;

(f) deductions made pursuant to Articles 105, 106 and 107 of Regulation (EC) No 1224/2009.

2. Stocks which are subject to precautionary or analytical TACs are identified in the Annex to this Regulation.

3. Article 3 of Regulation (EC) No 847/96 shall apply to stocks subject to precautionary TACs whereas Article 3(2) and (3) and Article 4 of that Regulation shall apply to stocks subject to analytical TACs, except where otherwise specified in the Annex to this Regulation.

4. Articles 3 and 4 of Regulation (EC) No 847/96 shall not apply where a Member State uses the year-to-year flexibility provided for in Article 15(9) of Regulation (EU) No 1380/2013.

Article 6
Conditions for landing catches and by-catches

Catches that are not subject to the landing obligation established in Article 15 of Regulation (EU) No 1380/2013 shall be retained on board or landed only if they:

1. have been taken by vessels flying the flag of a Member State having a quota and that quota has not been exhausted; or

2. consist of a share in a Union quota which has not been allocated by quota among Member States, and that Union quota has not been exhausted.

Article 7
Prohibition

The following shall be prohibited for Union fishing vessels:

1. to fish for orange roughy (*Hoplostethus atlanticus*) in Union and international waters of ICES subareas 1 to 10, 12 and 14, and to retain on board, to tranship or to land orange roughy caught in those subareas;

2. to fish for deep-sea sharks in ICES subareas 5 to 9, in Union and international waters of ICES subarea 10, in international waters of ICES subarea 12 and in Union waters of CECAF 34.1.1, 34.1.2 and 34.2 areas and to retain on board, tranship, relocate or land deep-sea sharks caught in those areas.

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[11] Regulation (EU) No 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

Article 8
Data transmission

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States submit to the Commission data relating to landings of quantities of stocks caught, they shall use the stock codes set out in the Annex to this Regulation.

Article 9
Entry into force

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,

For the Council
The President