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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 24 October 2016 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2016) 667 final |
| Subject: | COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council establishing specific conditions to fishing for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic and repealing Regulation (EC) No 2347/2002 |

Delegations will find attached document COM(2016) 667 final.

Encl.: COM(2016) 667 final

EUROPEAN
COMMISSION

Brussels, 21.10.2016
COM(2016) 667 final

2012/0179 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union**

**concerning the**

**position of the Council on the adoption of a Regulation of the European Parliament and of the Council establishing specific conditions to fishing for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic and repealing Regulation (EC) No 2347/2002**

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## 1. BACKGROUND

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| Date of transmission of the proposal to the European Parliament and to the Council (document COM(2012) 371 final – 2012/0179 COD): | 19 July 2012 |
| Date of the opinion of the European Economic and Social Committee: | 13 February 2013 |
| Date of the position of the European Parliament, first reading: | 10 December 2013 |
| Date of transmission of the amended proposal: | 24 October 2016 |
| Date of adoption of the position of the Council: | 18 October 2016 |

## 2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The deep-sea fisheries in the North-East Atlantic are partly dominated by traditional coastal fleets (Portugal) and large nomadic trawlers (France, Spain). Altogether they account for approximately 1% of landings from the North-East Atlantic. The economy of a number of fishing communities depends to a certain extent on deep-sea fisheries. The fisheries are pursued in Union waters and in international waters governed by agreements within the North East Atlantic Fisheries Commission (NEAFC).

Deep-sea stocks are fish stocks caught in waters beyond the main fishing grounds of continental shelves. They are distributed on the continental slopes or associated with seamounts. Deep-sea fisheries have only since 2003 been subject to detailed management on fishing opportunities (total allowable catch, maximum fishing effort). Before this, the fishery developments were largely unregulated and partly showed typical symptoms of the "race to fish" problem, resulting in the depletion of stocks.

Council Regulation (EC) No 2347/2002[1] established specific access requirements and associated conditions for fishing deep-sea stocks. However, with the time these measures proved not to be sufficiently constraining and could no longer ensure sustainable management of the stocks. In addition, they did not address the issue of preventing significant adverse impacts on vulnerable marine ecosystems.

In 2007 and 2010 the United Nations General Assembly adopted Resolutions 61/105 and 64/72, which called on States and Regional Fisheries Management Organisations to ensure the protection of vulnerable deep-sea marine ecosystems from the impact of bottom fishing gears, as well as sustainable exploitation of deep-sea fish stocks.

NEAFC measures in the area of deep-sea fishing which were adopted and transposed into Union law comprise the ban of gillnets, closed areas to protect benthic habitats which represent main sources of biodiversity (vulnerable marine ecosystems), the capping of total annually expended fishing effort, and the mapping of the existing fishing activity with the purpose of making new fisheries conditional on a prior environmental impact assessment.

The general objective of the proposal is to ensure as much as possible the sustainable exploitation of deep-sea stocks while reducing the environmental impact of these fisheries, and to improve the information base for scientific assessment. As long as data and method have not achieved the required level allowing MSY-based management, the fisheries have to be managed according to the precautionary approach to fisheries management.

In order to reduce the destructive impact on the marine ecosystem, the Proposal provided that the use of bottom trawls should be phased out in this fishery, as they are most harmful to vulnerable marine ecosystems and have shown high levels of undesired catch of deep-sea species. The transitional restrictions on bottom-set gillnets in fisheries below 600m depth and in the depth-range 200-600m should be accompanied by a prohibition to target deep-sea species.

As the Proposal provided for a phase-out of bottom gears, it did not include specific measures for preventing significant impacts to vulnerable marine ecosystems (VMEs) or closures of areas where such ecosystems are present.

The proposal also considered the opportunity to simplify the management system for these stocks, currently subject to a double instrument: catch limitations and capacity/effort limitation.

It should be noted that the legal framework has evolved since the submission of the Commission Proposal: the Common fisheries Policy (CFP) has been reformed and the new "Basic Begulation[2]" entered into force on 1 January 2014.

## 3. COMMENTS ON THE POSITION OF THE COUNCIL

### 3.1. General comments on Council position:

[1] Council Regulation (EC) No 2347/2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks (OJ L 351, 28.12.2002, p. 6)

[2] 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)

The position of the Council reflects the political agreement reached by the European Parliament and the Council on 30 June 2016. The Commission supports this agreement.

### 3.2. Amendments by the European Parliament at first reading:

During the negotiations, EP has revised its position due to changes in the legal framework and adoption of the new CFP. Therefore, the first reading position of EP taken on 10 December 2013 was considered as being less relevant for the negotiations.

### 3.3. Provisions introduced by the Council and Commission position in this regard:

The European Parliament and the Council were unfavourable to the proposed phase-out of bottom gears for targeting deep sea fish. However, they were agreed on measures replacing it, as well as other conservation measures for protecting VMEs. The text was therefore significantly amended to provide for the following measures reflected in the political agreement:

- Two types of fishing authorisations are introduced: targeting fishing authorisations for vessels that land more than 8% of deep-sea species in any fishing trip and at least 10 tonnes in the calendar year concerned; and by-catch fishing authorisations for vessels that have by-catches of deep-sea species. By-catch vessels are subject to flexibility of 15% beyond 10 tonnes;

- The capping of fishing capacity on the basis of the capacity of vessels that landed more than 10 tonnes of deep-sea species in 2009-2011;

- The limitation of targeted deep-sea fisheries to the area where targeted deep-sea fishing occurred in 2009-2011, i.e. before the Commission Proposal was submitted (the footprint area);

- Exploratory fishing outside the footprint area will be subject to an impact assessment. The Commission will establish the conditions for such fishing through implementing acts. The duration of exploratory fishing will be limited to maximum one year renewable once;

- The obligation for vessels to report encounters with vulnerable marine ecosystems below a depth of 400m and to move to an alternative area at least 5 nautical miles away from the area of encounter;

- The prohibition of deep-sea fishing with bottom trawls below 800 meters from the water surface;

- The closure of areas with VMEs for deep-sea fishing with bottom gears based on the impact assessment and the reported encounters. This will be put in place by the Commission through implementing acts on the basis of scientific advice;

- The application of stricter control provisions, such as restriction on transhipment, real-time reporting on the use of quota, enhanced follow-up of misreported catches, specific control and inspection programmes, higher multiplication factor for overfishing, possibility for the Commission to adopt emergency measures, etc.;

- The obligation to land quantities exceeding 100kg of deep-sea species only in designated ports and the requirement to notify the intention to land at least 4h in advance and for vessels of not more than 12m at least 1h in advance;

- The withdrawal of fishing authorisations for at least two months in case of a failure to comply with the conditions set in the fishing authorisation regarding the use of gears, areas of operation and catch limits, as well as a failure to take an observer on board;

- More specific data collection provisions and observer coverage of at least 20% for targeting vessels using bottom trawls and bottom-set gillnets and 10% coverage for other vessels. The coverage could be adapted through co-decision on the basis of scientific advice;

- The above measures concern the EU waters and certain CECAF areas where EU vessels fish. In the NEAFC area the current provisions on fishing permit, designated ports and data collection will continue to apply. The increased observer coverage of 20% will also apply in the NEAFC area;

- The evaluation of the impact of the measures four years after the entry into force of the Regulation to determine the extent of the objectives achieved.

The compromise text departs significantly from the original 2012 Commission proposal, but it is in line with the new rules set in the new Basic Regulation, provides for sufficient replacing measures to the phase-out of bottom gears, ensures conditions for preventing significant adverse impacts on vulnerable marine ecosystems and establishes better conditions for improving data collection. The Commission can accept all changes.

## 4. CONCLUSION

The legal services and lawyer linguists of the European Parliament and the Council were mandated to make all the relevant adjustments to the text. The resulting document therefore represents the political agreement reached by the co-legislators on 30 June 2016.