



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 November 2010

**Interinstitutional File:
2009/0153 (COD)**

**15633/1/10
REV 1**

**PECHE 258
ENV 732
CODEC 1153**

REVISED "I" ITEM NOTE

from: General Secretariat of the Council

to: Coreper

No. Cion prop.: 12438/10 PECHE 175 ENV 552 CODEC 761 - COM(2010) 393 final

No. prev. doc.: 14448/10 PECHE 219 ENV 641 CODEC 950

Subject: Amended proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture (**first reading**)
– Approval of the final compromise text

1. On 19 October 2009, the Commission submitted to the Council a proposal for a Council Regulation amending Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture.¹ Following the entry into force of the Lisbon Treaty, the proposal is subject to Art 43.2 of the TFEU and the ordinary legislative procedure applies. In order to adapt the original proposal to these requirements, the Commission, on 19 July 2010, submitted the above amended proposal.
2. On 2 June 2010, the Committee on Fisheries of the European Parliament adopted its report on the *original proposal*. The report has not yet been forwarded to the EP plenary due to the decision by the Commission to modify its proposal.

¹ 14728/09 PECHE 285 ENV 707 - COM (2009)541 final.

3. The Economic and Social Committee delivered its opinion on the amended proposal on 21 October 2010.
4. On 28 October 2010 informal contacts between the Council, the European Parliament and the Commission took place. During these informal contacts an agreement was reached on an amended text as set out in the Annex². The agreement respects the mandate of the Presidency approved by Coreper on 22 October 2010 and should therefore be acceptable.
5. In the light of the above, COREPER is invited to:
 - confirm the agreement reached in the informal contacts with the European Parliament and the Commission; and
 - allow the Presidency to send a letter to the European Parliament stating that if the plenary of the European Parliament were to adopt the amended text of the draft Regulation exactly in the same form as set out in the Annex to this note, the Council would adopt the Regulation in the form of the Commission proposal as thus amended by the Parliament, subject to the previous revision of the text by the legal-linguist experts.

² Changes to the Commission amended proposal are set out in ***bold and italic*** and deletions are shown in ~~striketrough~~.

2009/0153 (COD)

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

After transmission of the proposal to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 708/2007³ establishes a framework governing aquaculture practices in relation to alien and locally absent species to assess and minimise the possible impact of those species and of associated non-target species on aquatic habitats. It provides in its Article 2(7) that introductions and translocations for use in closed aquaculture facilities may at a future date be exempted from the permit requirement of Chapter III of that Regulation, based on new scientific information and advice.

¹

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OJ L 168, 28.6.2007, p. 1.

- (2) The Community-funded concerted action, "Environmental impacts of alien species in aquaculture" (IMPASSE), has delivered a new operational definition of 'closed aquaculture facilities'. For such facilities the degree of risk associated with alien and locally absent species could be reduced to an acceptable level if the potential for escape of the organisms to be farmed and of non-target organisms is addressed during transportation and if well-defined protocols are applied at the receiving facility. Introductions and translocations for use in closed aquaculture facilities should only be exempted from the permit requirement if those conditions are met.
- (3) It is therefore necessary to amend the definition of 'closed aquaculture facility' in Article 3, paragraph 3, of Regulation (EC) No 708/2007 by adding specific features intended to ensure the biosecurity of those facilities.
- (4) Member States should set up a list of closed aquaculture facilities located in their territory. For reasons of transparency, that list should be published and regularly updated on a website created in accordance with Commission Regulation (EC) No 535/2008⁴.
- (5) Following these amendments certain other adaptations are needed to the Regulation, in particular, to remove the references to "closed aquaculture facilities" in the definition of 'routine movement' and from Annex I.
- (6) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty ~~in respect of the indicative guidelines referred to in Article 6, the procedures and minimum elements to be addressed in an environmental risk assessment as provided for in Article 9, the conditions of quarantine as provided for in Article 15, the list of species referred to in Article 2(5), as laid down in~~ ***in order to adapt Annexes I, II, and III and to technical and scientific progress, to amend Annex IV in order to add species to that Annex and to adopt specifications of*** the conditions necessary for adding species to Annex IV, as referred in Article 24(2). ***It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.***

⁴ OJ L 156, 14.6.2008, p. 6.

(6a) The measures necessary for the implementation of this Regulation should be adopted by the Commission by means of implementing acts in accordance with Article 291 of the Treaty. According to that Article, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of its implementing powers shall be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁵ continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

(6b) The term "Community" used in the enacting terms of Regulation (EC) No 708/2007 should be changed, following the entry into force of the Treaty of Lisbon on 1 December 2009.

(7) Regulation 708/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 708/2007 is hereby amended as follows:

(1) In Articles 2(1), 13, 15(2), 19 and 24(2) the noun "Community", or the corresponding adjective, is replaced by the noun "Union", or the corresponding adjective, and any grammatical adjustments needed as a consequence of this replacement shall be made.

(2) ~~Article 2~~ is amended as follows:

(a) In paragraph 5, the first sentence is replaced by the following:

"5. This Regulation, except for Articles 3 and 4, paragraphs 1 and 2(a), shall not apply to the species listed in Annex IV."

⁵ OJ L 184, 17.7.1999, p. 23.

(b) Paragraph 7 is replaced by the following:

"7. Chapters III to VI shall not apply to movements of alien or locally absent species to be held in closed aquaculture facilities, provided that the transport is carried out under conditions that prevent the escape of those species and of the non-target species.

Member States shall set up a list of closed aquaculture facilities in their territory complying with the definition of the Article 3 (3) and update that list regularly. ~~Within six months following the adoption of the Regulation amending Regulation (EC) No 708/2007~~ **By [...]** * ~~The~~ list shall be published on the website set up in accordance with Article 4 (2) of the Commission Regulation (EC) No 535/2008."

(3) Article 3 is amended as follows:

(a) Point 3 is replaced by the following:

"3. 'Closed aquaculture facility' means a land-based facility:

(a) where:

- (i)** aquaculture is conducted in an aquatic medium which involves recirculation of water and
- (ii)** discharges do not connect in any way to open waters prior of being screened and filtered or percolated and treated to prevent the release of solid waste to the aquatic environment and the escape of the farmed species and of non-target species from the facility that might survive and subsequently reproduce;

(b) and which:

* ***Six months following the adoption of this Regulation. Exact date to be inserted by the Publications Office.***

- (i) prevents losses of reared specimens or *non-target species and other* biological material, including pathogens, due to factors, such as predators (e.g. birds) and flooding (e.g. the facility must be situated at a safe distance from open waters following a proper assessment made by the competent authorities), ~~and~~;
- (ii) prevents in a reasonable way losses of reared specimens or *non-target species and other* biological material, including pathogens, due to theft and vandalism; and
- (iii) ensures appropriate disposal of dead organisms;"

(b) Point 16 is replaced by the following:

"16. 'routine movement' means the movement of aquatic organisms from a source which has a low risk of transferring non-target species and which, on account of the characteristics of the aquatic organisms and/or the method of aquaculture to be used, does not give rise to adverse ecological effects;"

(4) In Article 4 the following paragraph 2 is added:

"2. The competent authorities in the Member States shall monitor and supervise aquaculture activities so as to ensure that

- (a) closed aquaculture facilities comply with the requirements laid down in Article 3(3), and
- (b) transport from or to closed aquaculture facilities takes place in conditions that are such as to prevent the escape of alien or non-target species."

(5) Article 14 is replaced by the following:

"Article 14

Release into aquaculture facilities in case of routine introductions

In the case of routine introductions, the release of aquatic organisms into aquaculture facilities shall be allowed without quarantine or pilot release, unless, in exceptional cases, the competent authority decides otherwise on the basis of specific advice given by the advisory committee. Movements from a closed aquaculture facility to an open aquaculture facility shall be considered as routine or non-routine movements in line with the provisions of Articles 6 and 7."

(6) Article 24 is amended as follows:

(a) The title is replaced by the following:

"Amendments of annexes and detailed rules"

(b) Paragraph 1 is replaced by the following:

"1. The Commission may, by means of delegated acts in accordance with Article 24a,

- (a)** amend Annexes I, II, ~~and III and IV~~ to this Regulation in order to adapt them to technical and scientific progress, ~~and~~
- (b)** adopt specifications for the conditions necessary for adding species to Annex IV, as provided for in paragraph 2, ~~and~~
- (c)** *add species to Annex IV where the conditions provided for in paragraph 2 and their further specifications are complied with."*

(c) The following paragraph 1a is inserted:

"1a. When adopting delegated acts as referred to in paragraph 1, the Commission shall act in accordance with the provisions of this Regulation."

(d) Paragraph 3 is deleted.

(e) The first sentence of paragraph 4 is replaced by the following:

"Member States may request the Commission to add species to Annex IV ~~by means of delegated acts in accordance with Article 24a.~~"

(f) Paragraph 5 is deleted.

(g) Paragraph 6 is replaced by the following:

"(6) Member States concerned may propose in respect of their outermost regions, as referred to in Article 349 of the Treaty on the Functioning of the European Union, the addition of species to be included in a separate part of Annex IV."

(h) The following paragraph 6a is added:

"The Commission may adopt detailed rules for the implementation of paragraphs 4 and 6, and in particular the formats, the contents and the particulars of Member States' requests for the addition of species and the information to be provided in support such requests, in accordance with the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002."

(7) The following Articles 24a, 24b and 24c are inserted:

"Article 24a

Exercise of the delegation

1. The power to adopt the delegated acts referred to in Article 24 shall be conferred on the Commission ~~for an indeterminate period of time.~~ ***for a period of five years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated power at the latest six months before the end of the five-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 24b.***

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 24b and 24c.

Article 24b

Revocation of the delegation

1. The delegation of powers referred to in Article 24 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 24c

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification.

At the initiative of the European Parliament or the Council this period shall be extended by ~~one~~ **two** months.

2. If, on expiry of ~~that~~ **the period referred to in paragraph 1**, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.

The delegated act ~~shall~~ **may** be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If **either** the European Parliament or the Council objects to ~~a~~ **the** delegated act **within the period referred to in paragraph 1**, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act."

(8) Annex I is amended as follows:

(a) The first paragraph is replaced by the following:

"Wherever possible, information is to be supported with references from the scientific literature, and notations to personal communications with scientific authorities and fisheries experts".

(b) Section D (Interaction with native species) is amended as follows:

- point 1 is replaced by the following:

"(1) What is the potential for survival and establishment of the introduced organism if it escapes?"

- point 6 is replaced by the following:

"(6) Will the introduced organisms survive and successfully reproduce in the proposed area of introduction or will annual stocking be required?"

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