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[...](2021) **XXX** draft

COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

amending Delegated Regulation (EU) No 2015/242 laying down detailed rules on the functioning of the Advisory Councils under the Common Fisheries Policy

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Advisory Councils are DG MARE stakeholders' consultation forums enshrined in the Common Fisheries Policy¹ to provide the Commission and Member States with advice and information on issues related to fisheries management in their area or field of competence. Rules on their functioning are laid down in Delegated Regulation (EU) No 2015/242². This amendment feeds into the work undertaken by DG MARE to improve the functioning of the Advisory Councils and enhance the way it works with them. The amendment is expected to ease the functioning of the ACs through improved representation of the various groups and interests, while also addressing issues stemming from the lack of details contained in the existing Regulation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

This draft act has been developed based on the Advisory Councils' input and suggestions collected in the run-up to and during a joint-Advisory Councils meeting on 18 January 2021. Advisory Councils had the opportunity to further comment on the draft criteria during another joint meeting on 5 May 2021. Their feedback on the final draft was collected during a meeting on 15 July 2021. Member States were also asked to identify other elements that could be addressed in this exercise and have been consulted during a Commission Expert Group meeting on 16 July 2021.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The purpose of this amendment is to (1) improve the balance between sector organisations and other interest groups (OIGs) in chairing positions, (2) specify the criteria for the classification of the members into the two categories of stakeholders, (3) strengthen the provisions for appropriate representation of OIGs, (4) detail working methods to ensure compliance with CFP objectives, transparency and respect of all opinions and (5) introduce a requirement for external and independent performance reviews.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

¹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, OJ L 354, 28.12.2013, p. 22–61.

² OJ L 41, 17.2.2015, p.1

Having regard to 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/EC³, and in particular Article 45(4) thereof,

Whereas:

- (1) Article 43 of Regulation (EU) No 1380/2013 provides for the establishment of Advisory Councils, which are to promote a balanced representation of all stakeholders in the field of fisheries and aquaculture and to contribute to the objectives of the common fisheries policy.
- (2) In accordance with Article 45(4) of Regulation (EU) No 1380/2013, the Commission adopted Commission Delegated Regulation (EU) 2015/242⁴ laying down detailed rules on the functioning of Advisory Councils under the common fisheries policy.
- (3) The Commission adopted Delegated Regulation (EU) No 2017/1575⁵ amending Delegated Regulation (EU) No 2015/242 to clarify the definition of ‘sector organisations’, specify the procedure for classifying members of the Advisory Councils in one of the two categories of stakeholders referred to in Article 45(1) of Regulation (EU) No 1380/2013, and grant both categories the right to decide autonomously on their representation in the executive committee.
- (4) The Advisory Councils and the Member States have been consulted in the light of the experience gained in the application of Delegated Regulation (EU) 2015/242.
- (5) In order to ensure a more balanced representation of all interests and improve the impartiality of the chairs, it is appropriate that Advisory Councils designate, by consensus, a chairperson and at least one vice-chairperson belonging to different categories of stakeholders as referred to in Article 45(1) of Regulation (EU) No 1380/2013. Working groups should be chaired, where possible, by representatives of the two categories of stakeholders. Advisory Councils should be empowered to designate a chairperson and vice-chairpersons from outside the Advisory Councils.
- (6) In order to ensure a smooth functioning of the Advisory Councils, it is necessary to further specify the criteria for the classification of the members of the Advisory Councils in the two categories of stakeholders referred to in Article 45(1) of Regulation (EU) No 1380/2013.
- (7) Article 2(2) of Delegated Regulation (EU) No 2015/242 defines sector organisations as organisations representing the fisheries and, where appropriate, aquaculture operators, and representatives of the processing and marketing sectors. Article 4(30) of Regulation (EU) No 1380/2013 defines ‘operator’ as a natural or legal person who operates or holds any undertaking carrying out any of the activities related to any stage of production, processing, marketing, distribution and retail chains of fisheries and aquaculture products. The criteria for classifying members of the Advisory Councils should therefore allow for the classification of organisations representing the above-mentioned sectors in the category ‘sector organisations’. In addition, organisations

³ OJ L 354, 28.12.2013, p. 22–61.

⁴ 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 policy (OJ L 354, 28.12.2013, p. 22–61).

⁵ Commission Delegated Regulation (EU) No 2017/1575 of 23 June 2017 amending Delegated Regulation (EU) No 2015/242 (OJ L 239, 19.9.2017, p. 1–2).

having indirect economic interests in the above-mentioned sectors, such as fishing net manufacturers or icemakers, should also be classified as ‘sector organisations’.

- (8) An organisation can be assumed representative of the sector when at least 50% of its members are themselves representatives from the sector or have direct or indirect economic interests in the sector, when it represents employees in the sector, or when at least 50% of its funding come from the sector. Such organisations should also be considered as ‘sector organisations’ for the purposes of Article 45(1) of Regulation (EU) No 1380/2013.
- (9) In order to ensure a balanced functioning of the Advisory Councils, it is necessary that organisations promoting horizontal principles such as the protection of the environment, consumers and human rights, health, promotion of equality or animal welfare are classified as sector organisations when they are representative of the sector in the sense of recitals (7) or (8). Organisations promoting such horizontal principles should therefore only be classified in ‘other interest groups’ if they are independent from the sector, meaning that less than 50% of their members are themselves representatives from the sector or have direct or indirect economic interest in the sector, that they do not represent employees in the sector, and that less than 50% of their funding come from the sector.
- (10) Article 4(28) of Regulation (EU) No 1224/2009 defines ‘recreational fisheries’ as non-commercial fishing activities exploiting marine living aquatic resources for recreation, tourism or sport. Organisations representing recreational or sport fishing, since they differ in nature, objectives and means from sector organisations as defined in Article 2(2) of Delegated Regulation (EU) No 2015/242, should be classified as ‘other interest groups’.
- (11) The fisheries and aquaculture sector is increasingly faced with the need to engage with stakeholders competing for different uses of the sea, including for energy production, extraction, tourism or conservation purposes. Such stakeholders might have interests that diverge from the ones of the fisheries and aquaculture sector. It is therefore necessary that organisations representing or having direct or indirect economic interests linked to the use of the marine environment or maritime space other than commercial fishing, aquaculture or the processing, marketing, distribution and retail of seafood are classified in ‘other interest groups’.
- (12) Specific attention should be paid to ensuring a balanced and wide representation of all stakeholders in the Advisory Councils, including other interest groups and representatives from small scale fleets.
- (13) In order to meet the requirements of Article 43(1) of Regulation (EU) 1380/2013, which provides that Advisory Councils are established to contribute to the achievement of the objectives of the Common Fisheries Policy as set out in article 2 thereof, it is necessary to detail the working methods which the Advisory Councils should respect when developing recommendations.
- (14) Advisory Councils, as bodies pursuing a goal of common European interest, are granted Union financial support. Therefore, their functioning should be regularly monitored and evaluated through the performance of external, regular and independent performance reviews
- (15) Therefore, Delegated Regulation (EU) 2015/242 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/242 is amended as follows:

- (1) Article 4 is replaced by the following:

‘Article 4

Structure and organisation of the Advisory Councils

1. In addition to the provisions of Article 43(1), Article 45(1) to (3) and Annex III of Regulations (EU) No 1380/2013, the Advisory Councils' structure and organisation shall comply with paragraphs 2 to 7 of this Article.
2. The Advisory Council shall designate, by consensus, a chairperson and at least one vice-chairperson. The chairperson may originate from outside the membership of the Advisory Council. In case the chairperson is designated amongst representatives of member organisations, at least one of the vice-chairpersons shall be designated amongst members of the category of sector organisations and other interest groups referred to in Article 2 to which the chairperson does not belong. This principle shall also apply, where possible, to working groups' chairpersons.
3. The general assembly of an Advisory Council shall:
 - (a) adopt the rules of procedure of the Advisory Council;
 - (b) meet at least once a year to approve the annual report, the annual strategic plan and the annual budget of the Advisory Council;
 - (c) decide on the classification of the members of the Advisory Council under the categories 'sector organisations' or 'other interest groups' using the criteria laid down in Annex I and based on objective and verifiable information, such as the provisions of the statutes, the list of the members and the nature of the activities of the organisation concerned.
4. Based on designations from the sector organisations and from the other interest groups for the seats allotted to them respectively, the general assembly appoints an executive committee of up to 25 members. After consultation of the Commission, the general assembly may decide to appoint an executive committee of up to 30 members to ensure appropriate representation of small scale fleets.
5. The general assembly shall ensure equitable membership fees, which enable balanced and wide representation of all stakeholders taking into account their financial capacity.
6. The executive committee shall:
 - (a) steer and manage the tasks of the Advisory Council in accordance with Article 44(2) and (3) of Regulation (EU) No 1380/2013;
 - (b) prepare the annual report, the annual strategic plan and the annual budget;
 - (c) adopt recommendations and suggestions as referred to in Article 44(2) of Regulation (EU) No 1380/2013.

7. The general assembly and the executive committee shall ensure a balanced and wide representation of all stakeholders, with emphasis on other interest groups and, where appropriate, small-scale fleets. The number of representatives of small-scale fleets should reflect the share of small scale fleets within the fishing sector of the Member States concerned.'

(2) Article 5 is replaced by the following:

Article 5

Working methods

1. The Advisory Council shall ensure that the recommendations and suggestions issued:
 - (a) comply with the rules and objectives of the Common Fisheries Policy as set out in Article 2 of Regulation (EU) No 1380/2013;
 - (b) are developed along strict principles of transparency, balanced representation and respect of all opinions expressed;
 - (c) are adopted, where possible, by consensus. If no consensus can be reached, dissenting opinions expressed by members shall be recorded in the recommendations adopted by the majority of the members present and voting.
2. When deciding on its working methods, the Advisory Council shall seek to ensure the efficiency and full participation of all members through the use of modern IT communication means and the provision of interpretation and translation services.'

(3) The following Article 7a is inserted:

Article 7a

Performance reviews

The Advisory Council shall subject itself at least once every five years to an independent performance review. This review shall aim to identify best practices and shortcomings, list recommendations aiming at improving the functioning of the Advisory Council and assess its overall contribution to the objectives of the Common Fisheries Policy as set out in Regulation (EU) 1380/2013. The results of these reviews shall be made public and, where shortcomings in the functioning of the Advisory Council are identified, shall be accompanied by an action plan setting out concrete actions and a clear timeframe for their implementation.'

(4) The Annex "Criteria for classifying Members of the Advisory Councils under the categories 'sector organisations' or 'other interest groups'" is added:

"ANNEX: Criteria for classifying members of the Advisory Councils under the categories 'sector organisations' or 'other interest groups'

1. An organisation shall be classified 'sector organisation' when at least one of the following criteria is met:
 - (a) the organisation represents or has direct or indirect economic interests in the sectors of commercial fishing, aquaculture, processing, marketing, distribution or retail of seafood;

- (b) a majority of the members of the organisation, either natural or legal persons, represent or have direct or indirect economic interests in the sectors of commercial fishing, aquaculture, processing, marketing, distribution or retail of seafood;
 - (c) the organisation represents employees in the sectors related to commercial fishing, aquaculture, processing, marketing, distribution or retail of seafood;
 - (d) at least 50% of the organisation's funding originates from undertakings active in the field of commercial fishing, aquaculture, processing, marketing, distribution or retail of seafood.
 - (e) provided that one of the criteria listed in point 1(a) to 1(d) is met, the organisation is active in the field of environment, consumers and human rights, health, promotion of equality or animal welfare.
2. An organisation shall be classified 'other interest group' when it is independent from economic interests linked to the sectors of commercial fishing, aquaculture, processing, marketing, distribution or retail of seafood and:
- (a) the organisation is primarily active in the field of environment, consumers and human rights, health, promotion of equality, animal welfare or recreational or sport fishing; or
 - (b) the organisation represents or has direct or indirect economic interests linked to the use of the marine environment or maritime space other than commercial fishing, aquaculture or the processing, marketing, distribution and retail of seafood. "

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 Commission
The President
Ursula VON DER LEYEN