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EUROPEAN COMMISSION

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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**

## EXPLANATORY MEMORANDUM

On 15 October 2009, the Commission adopted a proposal for a Council Regulation amending Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture (COM(2009) 541 final). The proposal was transmitted to the Council, the European Parliament and the European Economic and Social Committee on 16 October 2009 (2009/0153/CNS).

After the entry into force of the Lisbon Treaty on 1 December 2009, the proposal has moved to the ordinary legislative procedure (2009/0153/COD).

At the time of making the proposal, there was no need to envisage any modification of the "comitology" provisions laid down in Article 24 of Council Regulation (EC) No 708/2007. Yet, in the course of discussions at the European Parliament's Fisheries Committee and the Council Working Party on Internal and External Fisheries Policy, the issue of a possible conversion of the management procedure foreseen in Article 24 into delegated powers did come up.

In actual fact, it is appropriate to align the "comitology" provisions in issue to the novel provisions of Article 290 of the Treaty on the Functioning of the European Union pertaining to delegated powers and of Article 291 of the Treaty on the Functioning of the European Union pertaining to implementing powers. This will make Council Regulation No 708/2007 fully consistent with the new decision-making set-up under the new Treaty.

It is thus necessary to amend the Commission's initial proposal accordingly.

Inasmuch as delegated powers are concerned, the proposed amendments follow the line given in the Commission Communication on the implementation of Article 290 of the Treaty on the Functioning of the European (COM(2009) 673 final).

It also appears appropriate to amend the Commission's initial proposal in order to incorporate certain specifications of definitions (i.e. "closed aquaculture facility"), clarifications of certain provisions (i.e. situation of facilities at a safe distance from open waters) and a number of drafting improvements.

The amended proposal has no implications for the EU budget.

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 ~~COUNCIL~~ **EUROPEAN PARLIAMENT AND THE COUNCIL** OF THE EUROPEAN UNION,

Having regard to the Treaty of the Functioning of the European Union ~~establishing the European Community~~, and in particular Article 43(2) ~~Article 37 and Article 299(2)~~ thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

~~Having regard to the opinion of the European Parliament<sup>2</sup>,~~

Having regard to the opinion of the European Economic and Social Committee<sup>3</sup>,

**Acting in accordance with the ordinary legislative procedure,**

Whereas:

- (1) Regulation (EC) No 708/2007<sup>4</sup> 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.
- (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.

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<sup>1</sup> . . . P. . .

<sup>2</sup> . . . P. . .

<sup>3</sup> . . . P. . .

<sup>4</sup> OJ L 168, 28.6.2007, p. 1.

- (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 535/2008<sup>5</sup>.
- (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 following elements of Regulation (EC) No 708/2007: he 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 Annexes I, II, III and IV and the conditions necessary for adding species to Annex IV, as referred in Article 24(2).**
- (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 Article 2, 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** ~~the~~ list shall be published on the website set up in accordance with Article 4 (2) of the Commission Regulation (EC) No 535/2008.

- (2) Article 3 is amended as follows

- (a) point 3 is replaced by the following:

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

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<sup>5</sup> OJ L 156, 14.6.2008, p. 6.

- (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:
  - (i) prevents losses **of reared specimens or biological material including pathogens**, due to ~~environmental~~ 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 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;"

**(3) In Article 4 the following paragraph is added:**

**"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."**

(4) 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 ~~not be regarded as routine~~ **be considered as routine or non-routine movements in line with the provisions of Articles 6 and 7.**

**(5) Article 24 is amended as follows:**

**(a) Paragraph 1 is replaced by the following:**

**"1. The Commission may, by means of delegated acts in accordance with Article 24a, amend Annexes I, II, III and IV to this Regulation in order to adapt them to technical and scientific progress and adopt specifications for the conditions necessary for adding species to Annex IV, as provided for in paragraph 2."**

**(b) 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."**

**(c) Paragraph 3 is deleted**

**(d) 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."**

**(e) Paragraph 5 is deleted**

**(f) 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."**

**(6) 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.**

**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 month.**

**2. If, on expiry of that period, 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 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 the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.”**

(7) 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*