

Brussels, 4/01/2011
C/2010/9478

Dear President,

The Commission thanks the Committee for EU Policies of the Senate of the Italian Republic for its resolution on the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2187/2005 of 22 May 2006 as regards the prohibition of high-grading and restrictions on fishing for flounder and turbot in the Baltic Sea, the Belts and the Sound {COM(2010)325}, submitted on 14 June 2010.

With regard to the choice of legal basis for this proposal the changes introduced by the Lisbon Treaty in the decision-making framework of the Common Fisheries Policy make it a rule henceforth that all legislative proposals be decided in the ordinary legislative procedure (co-decision) by the European Parliament and the Council, which are given equal entitlements in respect of such proposals. There is one exception from this rule, allowing the Council alone to adopt "measures on fixing prices (...) and on the fixing and allocation of fishing opportunities" (Article 43(3) TFEU). In this respect, co-decision does not apply. Being an exception from the ordinary legislative procedure, Article 43(3) must be interpreted and applied strictly to the fixing and allocation of "fishing opportunities" (i.e. TACs, catch quotas and fishing effort limits) and to those measures which can be considered functionally linked thereto in the sense that they are necessary for the functioning of such limitations or have a direct bearing on a specific quantitative restriction and thus allow fixing the corresponding TAC or quota at a different level.

Given the aforementioned changes of Treaty rules and in preparation for the adoption, for the first time based on Article 43(3) TFEU, of the 2011 Fishing Opportunities Regulation for the Baltic Sea, it was necessary to carefully scrutinize all measures previously dealt with in the framework of such Fishing Opportunities Regulations and identify those which cannot be considered "measures on the fixing and allocation of fishing opportunities", falling thus outside the scope of such Regulations. For those that had to be maintained even after the expiry of Regulation 1226/2009 for reasons of proper conservation and management of marine resource, it was therefore necessary to propose incorporation in existing legislative acts through co-decision. By contrast, measures which could be regarded as functionally linked to fixing and allocation of fishing opportunities due to their direct influence on the functioning or level of such quantitative restrictions, were maintained in the regulatory

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framework of Fishing Opportunities Regulations based on Article 43(3) TFEU. As a result of this screening exercise, several amendments of existing legislative acts were proposed.

Regarding the comment formulated by the Senate on other technical measures contained in points B and C of annex III to Regulation (EC) No 1226/2009, these measures have been incorporated into the Regulation (EC) 2187/2005 on the basis of its Article 29 by the Commission Regulation (EU) No 686/2010 of 28 July 2010 amending Council regulation (EC) No 2187/2005 as regards specifications of Bacoma window and T90 trawl in fisheries carried out in the Baltic Sea, the Belts and Sound.

I hope you will find this a valuable contribution to your own deliberations and look forward to developing our policy dialogue further in the future.

Yours sincerely,

/-/ Maroš Šefčovič