Regulation (EU) No 304/2011 of the European Parliament and of the Council of 9 March 2011 amending Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture

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amending Council 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 on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinions of the European Economic and Social Committee[(1)],

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Council Regulation (EC) No 708/2007[(3)] 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 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, entitled 'Environmental impacts of alien species in aquaculture' (IMPASSE), has delivered a new operational definition of 'closed aquaculture facilities'. For facilities according to that definition, the degree of risk associated with alien and locally absent species can 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 Regulation (EC) No 708/2007 by adding specific features intended to ensure the biosecurity of those facilities.

(4) Member States should draw 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 set up in accordance with Commission Regulation (EC) No 535/2008 of 13 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture[4].

(5) Following these amendments certain other adaptations are needed to Regulation (EC) No 708/2007, 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 on the Functioning of the European Union (TFEU) in order to adapt Annexes I, II and III to technical and scientific progress, to amend Annex IV in order to add species to that Annex and to adopt specifications for the conditions necessary for adding species to Annex IV. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(7) 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 TFEU.

(8) 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.

(9) Regulation (EC) No 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(1), in the title of Article 13, in Article 15(2) and in the title of Article 19, 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 Article 3, Article 4(1) and Article 4(2)(a), shall not apply to the species listed in Annex IV.;

   (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 draw up a list of closed aquaculture facilities in their territory that comply with the definition in Article 3(3) and update that list regularly. By 25 October 2011, the list shall be published on the website set up in accordance with Article 4(2) of Commission Regulation (EC) No

535/2008[5] which lays down detailed rules for the implementation of this Regulation.;

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 before screening and filtering or percolation and treatment to prevent the release of solid waste into the aquatic environment and the escape from the facility of farmed species and non-target species that might survive and subsequently reproduce;

(b) and which:

(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);

(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 existing paragraph is numbered as '1' and the following paragraph 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 the 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 to be routine or non-routine movements in line with Articles 6 and 7.;

6. Article 24 is replaced by the following:

Article 24

Amendments of Annexes and detailed rules

1 The Commission may, by means of delegated acts in accordance with Article 24a and subject to the conditions laid down in Articles 24b and 24c:

a amend Annexes I, II and III to this Regulation in order to adapt them to technical and scientific progress;

b adopt specifications for the conditions necessary for adding species to Annex IV, as provided for in paragraph 3; and

c add species to Annex IV where the conditions provided for in paragraph 3 and their further specifications are complied with.

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

3 In order for its species to be added to Annex IV, an aquatic organism must have been used in aquaculture in certain parts of the Union for a long time (with reference to its life cycle) with no adverse effect, and its introduction and translocation must be possible without the coincident movement of potentially harmful non-target species.

4 Member States may request the Commission to add species to Annex IV. Member States may provide scientific data to prove coherence with relevant criteria for adding species to Annex IV. The Commission shall decide on the suitability of a request within 5 months of its receipt, excluding the time for the Member State to provide additional information if the Commission so requests.

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

6 The Commission may adopt detailed rules for the implementation of paragraphs 4 and 5, 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 of such requests, in accordance with the procedure referred to in Article 30(2) of Regulation (EC) No 2371/2002.;

7. the following Articles are inserted: