EUROPEAN
COMMISSION

Brussels, 31.8.2020
COM(2020) 438 final

2020/0210 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at meetings of the Parties to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf at meetings of the Parties to Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean in connection with the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean

The Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean ('Agreement') aims to prevent unregulated fishing in the high seas portion of the Central Arctic Ocean through the application of precautionary conservation and management measures as part of a long-term strategy to safeguard healthy marine ecosystems and to ensure the conservation and sustainable use of fish stocks. The Agreement is expected to enter into force later this year.

The Union is a party to the Agreement[1].

2.2. The meeting of the Parties

The meeting of the Parties is the decision-making body under the Agreement, which shall meet every two years or more frequently if it so decides. Decisions on questions of procedure are taken by majority and decision on questions of substance are taken by consensus. The Union has participation and voting rights.

2.3. Decisions by the meeting of the Parties

The meeting of the Parties has the authority to adopt conservation and management measures and these are binding on the contracting parties.

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

It is proposed that the position to be adopted on behalf of the Union at the meetings of the Parties is established according to a two-tier approach. A Council Decision will set out the guiding principles and orientations of the Union's position on a multiannual basis, and it is subsequently adjusted for each meeting by Commission non-papers to be discussed in the Council Working Party.

This approach is currently also taken in regional fisheries management organisations (RFMOs) and the position that is to be taken on behalf of the Union in those meetings.

The present decision incorporates the principles and orientations of the common fisheries policy (CFP), as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council[2], also taking into account the objectives set in the Commission Communication

[1] Council Decision (EU) 2019/407 of 4 March 2019 on the conclusion, on behalf of the European Union, of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (OJ L 73, 15.3.2019, p. 1.

[2] Regulation (EU) No 1380/2013 of the European Parliament and of the Council 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/EC (OJ L 354, 28.12.2013, p. 22).

on the external dimension of the CFP.[3] It also takes into consideration the Council conclusions on Oceans and Seas, including the Arctic[4], the Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on 'An integrated European Union policy for the Arctic'[5], and the Council conclusions[6] on the Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission on 'International ocean governance: an agenda for the future of oceans'[7].

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement'.

'Acts having legal effects' include acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'[8].

4.1.2. Application to the present case

The meeting of the Parties is a body set up by an agreement, namely the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean.

The acts which the meeting of the Parties is called upon to adopt constitute acts having legal effects. The envisaged acts of the meeting of the Parties will be binding under international law and are capable of decisively influencing the content of EU legislation, namely:

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing[9];
- Council Regulation (EC) No 1224/2009 establishing a Union control system for ensuring compliance with the rules of the CFP[10]; and
- Council Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets[11].

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

---

3 COM(2011) 424, 13.7.2011.
4 14249/19, 19.11.2019.
5 JOIN(2016) 21 final, 27.4.2016.
6 7348/1/17 REV 1, 24.3.2017.
7 JOIN(2016) 49 final, 10.11.2016.
8 Judgment of the Court of Justice of 7 October 2014, *Germany v Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.
9 OJ L 286, 29.10.2008, p. 1.
10 OJ L 343, 22.12.2009, p. 1.
11 OJ L 347, 28.12.2017, p. 81.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged acts relate to fisheries. Regulation (EU) No 1380/2013 is the legal basis setting out the principles to be reflected in this position.

Therefore, the substantive legal basis of the proposed Decision is Article 43(2) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 43(2) TFEU, in conjunction with Article 218(9) TFEU.

2020/0210 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at meetings of the Parties to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean ('Agreement') was concluded by the Union by Council Decision (EU) 2019/407[1]. The Agreement is expected to enter into force later this year.

(2) The meeting of the Parties is responsible for the adoption of measures designed to ensure the Agreement's implementation in order to achieve the objective of preventing unregulated fishing in the high seas portion of the Central Arctic Ocean through the application of precautionary conservation and management measures as part of a long-term strategy to safeguard healthy marine ecosystems and to ensure the conservation and sustainable use of fish stocks. Such measures may become binding upon the Union.

(3) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[2] provides that the Union is to ensure that fishing and aquaculture activities are environmentally sustainable in the long term and are managed in a way that is consistent with the objectives of achieving economic, social and employment benefits, and of contributing to the availability of food supplies. It also provides that the Union is to apply the precautionary approach to fisheries management, and is to aim to ensure that exploitation of marine biological resources restores and maintains population of harvested species above levels which can produce the maximum sustainable yield. It further provides that the Union is to take management and conservation measures based on the best available scientific advice, to support the development of scientific knowledge and advice, to gradually eliminate discards and to promote fishing methods that contribute to more selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, to fishing with low impact on marine ecosystem and fishery resources. Furthermore, Regulation (EU) No 1380/2013

[1] Council Decision (EU) 2019/407 of 4 March 2019 on the conclusion, on behalf of the European Union, of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (OJ L 73, 15.3.2019, p. 1).

[2] 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/EC (OJ L 354, 28.12.2013, p. 22).

specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations.

(4) As stated in the Council conclusions on Oceans and Seas, including the Arctic[3], the Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission 'An integrated European Union policy for the Arctic'[4], and the Council conclusions[5] on the Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission 'International ocean governance: an agenda for the future of oceans'[6], support for the Agreement and the possible creation of a regional fisheries management organisation or arrangement in the Arctic high seas is an important objective for the Union in order to safeguard the Arctic environment and ensure sustainable development in and around the Arctic region on the basis of international cooperation.

(5) It is appropriate to establish the position to be taken on the Union's behalf in the meeting of the Parties to the Agreement for the period 2020-2024, as conservation and management measures under the Agreement will be binding on the Union and capable of decisively influencing the content of Union law, namely, Council Regulations (EC) No 1005/2008[7] and (EC) No 1224/2009[8], and Regulation (EU) 2017/2403 of the European Parliament and of the Council[9].

(6) In view of the limited knowledge on and nature of fishery resources in the Agreement area, and the consequent need for the position of the Union to take account of new developments, including new scientific and other relevant information presented before or during the meetings of the Parties, procedures should be established, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on European Union, for the year-to-year specification of the Union's position for the period 2020-2024.

(7) This decision on the position to be taken on behalf of the Union in the meetings of the Parties to the Agreement may be followed at a later stage by a further separate Council decision on the opening of negotiations to establish one or more additional regional or subregional fisheries management organisations or arrangements in the Arctic high seas,

---

3 14249/19 of 19.11.2019.

4 JOIN(2016) 21 final of 27.4.2016.

5 7348/1/17 REV 1 of 24.3.2017.

6 JOIN(2016) 49 final of 10.11.2016.

7 Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

8 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the Common Fisheries Policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

9 Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the Parties to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (Agreement) is set out in Annex I.

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the Parties to the Agreement shall be conducted in accordance with Annex II.

Article 3

The Union's position set out in Annex I shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, at the latest for the meeting of the Parties to the Agreement in 2025.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President