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2023/0279 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Extended Commission of the Convention for the Conservation of Southern Bluefin Tuna and repealing Decision (EU) 2019/824

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the behalf of the European Union at meetings of the Extended Commission of the Convention for the Conservation of Southern Bluefin Tuna for the period 2024-2028 regarding the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. Convention for the Conservation of Southern Bluefin Tuna

The Convention for the Conservation of Southern Bluefin Tuna (CSBT Convention) aims, by establishing the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), to ensure the conservation and optimum utilisation of southern bluefin tuna. The Convention entered into force on 20 May 1994.

The EU is a contracting party to the Extended Commission of the CCSBT, having approved the Convention pursuant to Council Decision (EU) 2015/2437[1].

2.2. Commission for the Conservation of Southern Bluefin Tuna

The CCSBT is the body established by the CSBT Convention to be responsible for the management and conservation of fishery resources in the area of distribution of southern bluefin tuna. As the Convention is restricted to states, the CCSBT has established the 'Extended Commission of the CCSBT', which includes fishing entities and the EU in addition to the CCSBT members. The Extended Commission of the CCSBT prepares decisions that the CCSBT then formally endorses. CCSBT measures for the conservation, management and optimum utilisation of southern bluefin tuna will become binding on the EU.

As a member of the Extended Commission of the CCSBT, the EU is entitled to participate in, and vote on, its decisions. The CCSBT takes its decisions by consensus.

2.3. CCSBT decisions

The CCSBT has the authority to adopt conservation and enforcement measures for the fisheries under its purview and these are binding on the contracting parties.

In accordance with Article 8(7) of the CSBT Convention, the measures enter into force immediately upon adoption by the CCSBT.

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

The position to be adopted on behalf of the EU at the annual meetings of regional fisheries management organisations is currently established through a two-tier approach. A Council Decision sets out the guiding principles and orientations of the EU's position on a multiannual basis and it is subsequently adjusted for each annual meeting by Commission services non-papers to be endorsed by the Council.

[1] Council Decision (EU) 2015/2437 of 14 December 2015 on the conclusion, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) concerning the membership of the EU in the Extended Commission of the Convention for the Conservation of Southern Bluefin Tuna (OJ L 366, 23.12.2015, p. 27).

For the CCSBT, this approach is implemented by Council Decision (EU) 2019/824 of 14 May 2019, which sets out the EU's position in the CCSBT for the period 2019-2023. The Decision contains general principles, but also takes into account to the extent possible the specificities of the CCSBT. In addition, it sets out the standard process for establishing the EU's position year by year, as requested by Member States.

Council Decision (EU) 2019/824 incorporated the principles of the new common fisheries policy, 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 out in the Commission Communication on the external dimension of the common fisheries policy[3]. Moreover, it adjusted the EU's position to the Treaty of Lisbon.

Council Decision (EU) 2019/824 provides for a review of the EU's position before the 2024 annual meeting. Therefore, this proposal sets out the EU's position in the CCSBT for the period 2024-2028, thereby replacing Council Decision (EU) 2019/824.

The current revision takes into consideration, in relation to fishing, the European Green Deal, notably Biodiversity[4], Climate Adaptation[5] and Farm to Fork Strategies[6]. It also takes into account the Plastics Strategy[7] and the Zero pollution Action Plan[8]. Furthermore, it also takes into consideration, the International Ocean Governance Joint Communication[9].

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 EU'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, and instruments that do not have a binding

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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).

3 COM(2011) 424, 13.7.2011.

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380).

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe — the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381)

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Strategy for Plastics in a Circular Economy COM(2018) 28 final.

8 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil COM/2021/400 final.

9 Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Setting the course for a sustainable blue planet JOIN/2022/28 final.

effect under international law, but are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'[10].

4.1.2. Application to the present case

The CCSBT is a body set up by an agreement, namely the CSBT Convention.

The acts that the CCSBT is called upon to adopt constitute acts having legal effects. They are to be binding under international law in accordance with Article 20 of the CSBT Convention and are capable of decisively influencing the content of EU legislation, including:

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing[11];
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy[12]; and
- Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets[13].

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

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

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 EU's behalf. If that 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 act 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. The Decision is to replace Council Decision (EU) 2019/824, which covers the period 2019-2023.

4.3. Conclusion

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

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10 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.

11 OJ L 286, 29.10.2008, p. 1.

12 OJ L 343, 22.12.2009, p. 1.

13 OJ L 347, 28.12.2017, p. 81.

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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) By Council Decision 2015/2437[1], the European Union concluded the Convention for the Conservation of Southern Bluefin Tuna ('CSBT Convention'), which established the Commission for the Conservation of the Southern Bluefin Tuna ('CCSBT').

(2) The CCSBT is responsible for the management and conservation of the fishery resources in the area of distribution of Southern Bluefin tuna. As the CSBT Convention is restricted to States, the CCSBT has established the 'Extended Commission of the CCSBT' that includes fishing entities and the Union in addition to the CCSBT Members. Within the CCSBT, the Extended Commission of the CCSBT prepares the decisions that the CCSBT formally endorses. The CCSBT adopts conservation and management measures for the conservation, management and optimum utilisation of Southern Bluefin tuna. 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 living 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 best available scientific advice, to support the

[1] Council Decision (EU) 2015/2437 of 14 December 2015 on the conclusion, on behalf of the European Union, of the Agreement in the form of an Exchange of Letters between the European Union and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) concerning the membership of the EU in the Extended Commission of the Convention for the Conservation of Southern Bluefin Tuna (OJ L 366, 23.12.2015, p. 27).

[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).

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. Besides, Regulation (EU) No 1380/2013 specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations.

(4) In line with the Biodiversity[3], Climate Adaptation[4] and Farm to Fork Strategies[5], it is essential to protect nature and reverse the degradation of ecosystems. The risks stemming from climate change and loss of biodiversity must not jeopardise the availability of the goods and services that healthy marine ecosystems provide to fishers, coastal communities and humanity at large.

(5) The Plastics Strategy[6] refers to specific measures to reduce plastics and marine pollution as well as the loss or abandonment at sea of fishing gear. Furthermore, the Zero pollution Action Plan[7] aims at reducing by 50% plastic litter at sea and by 30% micro-plastics released into the environment.

(6) Under the International Ocean Governance Joint Communication[8], marine biodiversity protection and conservation are key priorities under the EU's external action The EU is the most prominent actor in Regional Fisheries Management Organisations (RFMOs) and fisheries bodies worldwide. There, the EU promotes the sustainability of fish stocks, promotes transparent decision-making based on sound scientific advice, enhances scientific research, and strengthens compliance.

(7) It is appropriate to establish the position to be taken on the Union's behalf in the meetings of the CCSBT for the period 2024-2028, as the CCSBT conservation and enforcement measures will be binding on the Union and capable of decisively influencing the content of Union law, namely, Council Regulation (EC) No 1005/2008[9]; Council Regulation (EC) No 1224/2009[10]; and Regulation (EU) 2017/2403 of the European Parliament and of the Council[11].

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3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380).

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe — the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381)

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8 Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Setting the course for a sustainable blue planet JOIN/2022/28 final.

9 Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated 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).

10 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)

(8) Currently the position to be taken on the Union's behalf in the meetings of the CCSBT is established by Council Decision (EU) 2019/824[12]. It is appropriate to repeal that Decision and establish a new Decision for the period 2024-2028.

(9) In view of the evolving nature of fishery resources in the area of distribution of Southern Bluefin tuna and the consequent need for the Union'sposition to take account of new developments, including new scientific and other relevant information presented before or during the meetings of the CCSBT, procedures should be established for the year-to-year specification of the Union's position for the period 2024-2028, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the Extended Commission of the Convention for the Conservation of the Southern Bluefin Tuna (CCSBT) is set out in Annex I of this Decision.

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the Extended Commission of the CCSBT 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 annual meeting of the Extended Commission of the CCSBT in 2029.

Article 4

Decision (EU) 2019/824 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

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).

11 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).

12 Council Decision (EU) 2019/824 of 14 May 2019 on the position to be taken on behalf of the European Union in the Extended Commission of the Convention for the Conservation of Southern Bluefin Tuna (CCSBT), and repealing the Decision of 12 June 2014 on the position to be adopted, on behalf of the Union, in the CCSBT (OJ L 134, 22.5.2019, p. 19).