COUNCIL DECISION (EU) 2021/1765

of 5 October 2021

on the position to be adopted on behalf of the European Union, for the period 2021–2026, within the Specialised Committee on Fisheries established by the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) On 29 April 2021 the Council adopted Decision (EU) 2021/689 ([1]) on the conclusion of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ([2]) (the 'Trade and Cooperation Agreement'). The Trade and Cooperation Agreement entered into force on 1 May 2021.

(2) Article 8(1), point (q), of the Trade and Cooperation Agreement establishes the Specialised Committee on Fisheries. Its competences are set out in Article 8(4) of the Trade and Cooperation Agreement.

(3) Article 8(4), point (f), of the Trade and Cooperation Agreement empowers the Specialised Committee on Fisheries to establish, supervise, coordinate and dissolve Working Groups.

(4) In accordance with Article 8(10) of the Trade and Cooperation Agreement, and by way of derogation from Article 8(9) thereof, the Specialised Committee on Fisheries may adopt and subsequently amend its own rules that are to govern its work.

(5) Article 508 of the Trade and Cooperation Agreement lists, in a non-exhaustive manner, the tasks and areas of competence of the Specialised Committee on Fisheries.

(6) The Specialised Committee on Fisheries is responsible for the adoption of measures, including decisions and recommendations, in support of the objectives set out in Article 494 of the Trade and Cooperation Agreement, in particular the objective of ensuring that fishing activities for shared stocks in the Parties' waters are environmentally sustainable in the long term and contribute to achieving economic and social benefits, while fully respecting the rights and obligations of independent coastal States as exercised by the Parties, and the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield (MSY). Such measures may become binding upon the Union.

(7) Regulation (EU) No 1380/2013 of the European Parliament and of the Council ([3]) 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 provides that the Union is to implement an ecosystem-based approach, take management and conservation measures based on best available scientific advice, support the development of scientific knowledge and advice, gradually eliminate discards and promote fishing methods that

([1]) OJ L 149, 30.4.2021, p. 2.
([2]) OJ L 149, 30.4.2021, p. 10.
([3]) 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).

contribute to more selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, and to fishing with low impact on marine ecosystem and fishery resources. 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, without prejudice to specific provisions adopted under Article 218 of the Treaty on the Functioning of the European Union (TFEU), and sets out the principles and objectives of management of stocks of common interest to the Union and third countries and provisions concerning agreements on exchange and joint management.

(8) It is appropriate to establish the position to be adopted on behalf of the Union within the Specialised Committee on Fisheries with regard to acts of the Specialised Committee on Fisheries having legal effects.

(9) That position and its specification should be established by the Council in accordance with the relevant provisions of the Treaties, Decision (EU) 2021/689 and this Decision. This Decision should cover the position of the Union within the Specialised Committee on Fisheries for the period 2021–2026, with the exception of the establishment or dissolution of any working group on fisheries and annual consultations on fishing opportunities, which will be covered by separate decisions under Article 218(9) TFEU. This Decision does not exclude the adoption of separate decisions under Article 218(9) TFEU for other issues of particular importance.

(10) The European Parliament is to be immediately and fully informed pursuant to Article 218(10) TFEU.

(11) In view of the evolving nature of fishery resources covered by the Trade and Cooperation Agreement 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 Specialised Committee on Fisheries, provisions on cooperation and coordination should be laid down, 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 specification of the Union position for the period 2021–2026. Building on the practice developed with regard to the consultations on the fishing opportunities for 2021, those provisions on cooperation and coordination should ensure the regular and full involvement of the Council and its preparatory bodies, in line with the procedures set out in Decision (EU) 2021/689,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the Union within the Specialised Committee on Fisheries established by Article 8(1), point (q), of the Trade and Cooperation Agreement is set out in Annexes I and II to this Decision.

Article 2

The Union position referred to in Article 1 shall be further specified in accordance with Annex III.

Article 3

This Decision shall apply until 31 December 2026. It shall be assessed as necessary and, where appropriate, revised by the Council upon a proposal from the Commission. A review shall in any event take place by 31 December 2022.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 5 October 2021.

For the Council
The President
A. ŠIRCELJ

ANNEX I

Principles

The Union's position within the Specialised Committee on Fisheries established by Article 8(1), point (q), of the Trade and Cooperation Agreement shall respect the following principles:

(a) the Union shall act in accordance with the objectives and principles pursued by the Union within the common fisheries policy (CFP) to ensure that fisheries 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, in particular through the aims related to the MSY as laid down in Article 2(2) of Regulation (EU) No 1380/2013 and the applicable multiannual plans, and in line with the precautionary approach, to promote the implementation of an ecosystem-based approach to fisheries management, to avoid and reduce, as far as possible, unwanted catches, and gradually eliminate discards, and to minimise the impact of fishing activities on marine ecosystems and their habitats, as well as to provide, through the promotion of economically viable and competitive Union fisheries, for a fair standard of living for those who depend on fishing activities while taking account of the interests of consumers; and shall act in accordance with Articles 28 and 33 of that Regulation as regards the management of stocks of common interest;

(b) the Union shall ensure the operationalisation of the Specialised Committee on Fisheries, including the preparation or amendment of its rules of procedure;

(c) the Union shall aim to ensure that acts or measures having legal effects adopted by the Specialised Committee on Fisheries are consistent with international law, including the United Nations Convention on the Law of the Sea, the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks and the FAO Agreement on Port State Measures and with the Union's international commitments;

(d) the Union shall ensure that acts or measures having legal effects adopted by the Specialised Committee on Fisheries are consistent with Article 494 of the Trade and Cooperation Agreement, including the promotion of the long-term sustainability and optimum use of shared stocks, the use of the best available scientific advice principally provided by the International Council for the Exploration of the Sea (ICES) as the basis for conservation and management decisions, and the application of proportionate and non-discriminatory measures for the conservation of marine living resources and the management of fisheries resources, while preserving the regulatory autonomy of the Parties, pursuing a level playing field between the EU and UK fleets and seeking a shared approach between the Parties' rules;

(e) the Union shall promote positions consistent with best practices and with positions taken in other forums and multilateral and bilateral consultations in the north-east Atlantic, and promote coordination with other Parties and with the North East Atlantic Fisheries Commission (NEAFC);

(f) the Union shall act in line with the Council conclusions of 19 March 2012 on the Commission communication on the external dimension of the common fisheries policy;

(g) the Union shall aim to promote timely implementation by the Parties of measures adopted under the Trade and Cooperation Agreement into their respective legal frameworks, taking into account their respective internal procedures.

ANNEX II

Orientations for the Union position

1. The Union shall pursue the following actions within the Specialised Committee on Fisheries:

(a) discussion and cooperation in relation to sustainable fisheries management;

(b) consideration of measures for fisheries management and conservation, including emergency measures and measures to ensure selectivity of fishing activities. This should include seeking a shared approach on technical measures and, where appropriate, discussions on any measures notified by one Party to the other Party;

(c) consideration of approaches to the collection of data for science and fisheries management purposes, the sharing of such data, including information relevant to monitoring, controlling and enforcing compliance, and the consultation of scientific bodies regarding the best available scientific advice;

(d) consideration of measures to ensure compliance with the applicable rules, including joint control, monitoring and surveillance programmes and the exchange of data to facilitate monitoring uptake of fishing opportunities and control and enforcement;

(e) development and adoption of guidelines for setting the provisional total allowable catches (TACs) for special stocks as referred to in Article 499(6) of the Trade and Cooperation Agreement on provisional TACs, taking into account the difficulty of fishing all stocks in a mixed fishery at the MSY level at the same time, in particular where it is very difficult to avoid the phenomenon of choke species, and, where necessary, considering how a specific approach might need to be developed to delivering results that contribute to the overall objective of sustainable management of the fisheries and marine biological resources in its three dimensions, in line with the objectives of the CFP, including flexibilities available under multiannual plans;

(f) consideration of matters relating to the designation of ports for landings, including the facilitation of the timely notification by the Parties of such designations and of any changes to those designations;

(g) establishment of timelines for the notification of measures referred to in Article 496(3), the communication of the lists of vessels referred to in Article 497(1) and the notice referred to in Article 498(7) of the Trade and Cooperation Agreement;

(h) provision of a forum for consultations under Article 501(2) and Article 506(4) of the Trade and Cooperation Agreement;

(i) development and adoption of a mechanism for voluntary in-year transfers of fishing opportunities between the Parties, as provided for in Article 498(8) of the Trade and Cooperation Agreement, built on voluntary contributions by Member States and ensuring that the Member States that contribute to the swaps also benefit from them proportionally;

(j) consideration of the application and implementation of Articles 502 and 503 of the Trade and Cooperation Agreement;

(k) supervise and coordinate Working Groups in accordance with Article 8(4), point (f), of the Trade and Cooperation Agreement, which will be established and dissolved through a separate decision under Article 218(9) TFEU;

(l) seek agreement on the issues referred to the Specialised Committee on Fisheries in any written record resulting from annual consultations on fishing opportunities, on the basis of the Union position established for those consultations as further specified under this Decision, including that signed between the Parties on 11 June 2021;

(m) seek agreement on the modalities of a review under Article 510 of the Trade and Cooperation Agreement.

2. The Union may pursue the following actions within the Specialised Committee on Fisheries:

   (a) consideration of development of multi-year strategies for conservation and management as the basis for the setting of TACs and other management measures;

   (b) the development of multi-year strategies for the conservation and management of non-quota stocks as provided for in the Trade and Cooperation Agreement;

   (c) recording matters agreed by the Parties following consultations under Article 498 of the Trade and Cooperation Agreement;

   (d) amending the list of pre-existing international obligations referred to in the third subparagraph of Article 496(2) of the Trade and Cooperation Agreement;

   (e) matters related to any other aspect of cooperation on sustainable fisheries management under the Trade and Cooperation Agreement.

3. The Union shall, where appropriate, support the adoption by the Specialised Committee on Fisheries of the decisions or recommendations having legal effects in relation to the matters referred to in points 1 and 2 of this Annex.

ANNEX III

Specification of the Union's position to be adopted within the Specialised Committee on Fisheries

Before the Specialised Committee on Fisheries adopts acts or measures having legal effects, the necessary steps shall be taken so that the position to be expressed on the Union's behalf takes account of the latest scientific and other relevant information transmitted to the Commission, in accordance with the principles and orientations set out in Annexes I and II.

To this effect, and based on that information, the Commission shall transmit to the Council, sufficiently in advance of each meeting of the Specialised Committee on Fisheries or of any written procedure in the Specialised Committee on Fisheries, and in any case not later than eight working days prior to that meeting or usage of written procedure, a written document setting out the particulars of the proposed specification of the Union's position for discussion and endorsement of the details of the position to be expressed on the Union's behalf.

The European Parliament shall be informed in accordance with Article 218(10) TFEU.

The principles set out in this Annex shall continue to guide the work of the Commission during the Specialised Committee on Fisheries meetings.

If in the course of a meeting of the Specialised Committee on Fisheries it is impossible to reach an agreement, in order for the Union's position to take account of new elements, the matter shall be referred to the Council in accordance with the procedure set out in this Annex.