EUROPEAN
COMMISSION

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2020/0205 (NLE)

Proposal for a

COUNCIL DECISION

approving amendments to the Agreement for co-operation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement) with regard to the extension of its material and geographical scope of application

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The present proposal concerns the decision authorising the Union negotiator (in this case: the Commission) to conclude, on the Union's behalf, the amendments to the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances (Bonn Agreement)[1] with regard to the extension of its material and geographical scope of application, with a view to improving cooperation on surveillance in respect of the requirements of Annex VI to the MARPOL Convention ('MARPOL amendment') and in light of the accession of the Kingdom of Spain to the Agreement ('Spain amendment').

1.1 THE AGREEMENT FOR CO-OPERATION IN DEALING WITH POLLUTION OF THE NORTH SEA BY OIL AND OTHER HARMFUL SUBSTANCES (THE 'BONN AGREEMENT')

The Bonn Agreement aims to combat pollution in the North Sea Area and safeguard coastal areas from maritime disasters and chronic pollution from ships and offshore installations. The European Union (then 'European Economic Community') is a Contracting Party to the Agreement. North Sea States of the European Union together with Norway are also Contracting Parties to the Agreement.

The Agreement seeks to promote active cooperation and mutual assistance among coastal States and the European Union in combating pollution of the North Sea by oil and other harmful substances in order to protect the marine environment and the interests of coastal States. To that effect, the Agreement provides that Contracting Parties carry out surveillance as an aid to detecting and combating pollution and to preventing violations of anti-pollution regulations. The North Sea is divided into different zones where the responsibility for the surveillance and assessment of incidents is assigned to Contracting Parties. Contracting Parties are required to inform any other Contracting Party concerned of their becoming aware of the presence of oil or other harmful substances likely to constitute a serious threat to the coast or related interests of any other Contracting Party. Contracting Parties may require assistance to deal with pollution at sea or on their coasts, in which case the Contracting Parties called upon for help are required to use their best endeavours to bring such assistance as is within their power.

The Bonn Agreement was concluded by the European Economic Community by Council Decision 84/358/EEC[2]. The Bonn Agreement was amended in 1989. Those amendments entered into force on 1 April 1994. The European Economic Community approved those amendments by Council Decision 93/540/EEC[3].

Pursuant to Article 16 of the Bonn Agreement, a proposal by a Contracting Party for the amendment of the Bonn Agreement or its Annex is to be considered at a meeting of the Contracting Parties. Following adoption of the proposal by unanimous vote, the amendment is

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1 OJ L 188, 16.7.1984

2 Council Decision 84/358/EEC of 28 June 1984 concerning the conclusion of the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and other Harmful Substances (OJ L 188, 16.7.1984, p.7)

3 Council Decision 93/540/EEC of 18 October 1993 approving certain amendments to the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (OJ L 263, 22.10.1993, p.51).

to be communicated by the Depositary Government to the Contracting Parties. Such amendments are to enter into force on the first day of the second month following the date on which the Depositary Government receives notifications of approval from all Contracting Parties.

The Depositary of the Bonn Agreement is the Government of the Federal Republic of Germany (Article 18(3) Bonn Agreement).

Pursuant to Article 20 of the Bonn Agreement, the Contracting Parties to the Bonn Agreement may unanimously invite any other coastal State of the North East Atlantic area to accede to the Bonn Agreement. In such a case, Article 2 of the Bonn Agreement and its Annex are to be amended as necessary and the amendment will take effect upon the entry into force of this Agreement for the acceding State.

On 7 October 2019, the Council adopted a Decision authorising the Commission to negotiate, on behalf of the Union, an amendment under Article 16 of the Bonn Agreement to extend the scope of application of the Agreement to improve cooperation on surveillance in respect of the requirements of Annex VI to the MARPOL Convention, as well as the extension under Article 20 of the Agreement to the Kingdom of Spain.

The Contracting Parties to the Bonn Agreement, during their thirty-first meeting from 9 to 11 October 2019, have agreed to these amendments by unanimity. The amendments are now submitted for conclusion by the Union. Further, the Kingdom of Spain will need to ratify the extension under Article 20 of the Agreement of the Bonn Agreement to its zone of responsibility.

1.2 THE AMENDMENTS TO THE BONN AGREEMENT

1.2.1 The 'MARPOL amendment' – amending the substantive scope of the Agreement

This amendment aims at improving cooperation and coordination between the Contracting Parties in combating unlawful air emissions caused by shipping in order to limit the negative consequences of the combustion of marine fuels with high sulphur or nitrogen content for human health, biodiversity and the entire marine environment. The Contracting Parties envisage to achieve the above through amending various provisions of the Bonn Agreement (Articles 1, 5, 6 and 15 thereof, as well as the title of the Agreement and the preamble thereto) so as to extend its scope of application to air pollution from ships as regulated under Annex VI to the MARPOL Convention.

1.2.2 The 'Spain amendment' – amending the geographical scope of the Agreement

The Contracting Parties have also invited the Kingdom of Spain to accede to the Agreement, by amending Article 2 and by specifying the Atlantic boundary of the North Sea area relevant for the purpose of the Agreement and the Annex thereto, while revising the boundaries of various zones of surveillance for the purpose of Article 6 of the Agreement. More specifically, a new definition of the revised area covered by the Agreement has been determined. France has accepted the introduction of a new zone of responsibility of France that is directly contiguous with the zone of joint responsibility of France and the United Kingdom. It covers the area between the zone of joint responsibility of France and the United Kingdom and the new zone of responsibility of Spain in order to close any gaps between the old boundary of the Bonn Agreement and the new zone of responsibility of Spain.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Procedural legal basis

Principles

Article 218(6) of the Treaty on the Functioning of the European Union (TFEU) provides that "*the Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement".* Further, this article also provides that, except where agreements relate exclusively to the common foreign and security policy, the Council adopts the decision concluding the agreement after obtaining the consent of the European Parliament in case where agreements cover fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

Application to the present case

As the Contracting Parties have agreed to amend the geographical and material scope of the Bonn Agreement, it is appropriate for the Union to conclude these amendments.

Therefore, the procedural legal basis for the proposed decision is Article 218(6) TFEU.

Substantive legal basis

Principles

The substantive legal basis for a decision under Article 218(6) 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(6) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

Application to the present case

With regard to an envisaged material amendment concerning the extension of the material scope ('the MARPOL amendment') of the Bonn Agreement, it simultaneously pursues a number of objectives in the areas of civil protection and environment, covered by Articles 196 and 191 TFEU, respectively, which are inseparably linked without one being incidental to the other. Therefore, the substantive legal basis of a decision under Article 218(6) TFEU will have to include, exceptionally, the various corresponding substantive legal bases.

Conclusion

The legal basis of the proposed decision should be Article 191 TFEU and Article 196 TFEU in conjunction with Article 218(6) TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

NA

- **Stakeholder consultations**

The amendments are non-contentious and all Contracting Parties, including all the individual Member States that are parties to the Agreement, support them.

- **Collection and use of expertise**

NA

- **Impact assessment**

The formal impact assessment process had been waived due to the political imperative to move ahead quickly in order for the EU, as a Contracting Party to the Bonn Agreement, to be able to negotiate and vote on the amendments to the Bonn Agreement at the Contracting Parties' meeting on 9-11 October 2019 as well as to endorse them at the Ministerial Meeting on 11 October 2019. This proportionate approach is also justified because it is expected that the amendments to the Bonn Agreement will only have positive economic, social and environmental impacts.

- **Regulatory fitness and simplification**

NA

- **Fundamental rights**

The proposal is consistent with the EU Treaties and the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The amendments to the Bonn Agreement will have no negative impact on the budget of the Union.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

NA

- **Explanatory documents (for directives)**

NA. See section below.

- **Detailed explanation of the specific provisions of the proposal**

The sole substantive article of the proposal provides for the Council's authorisation for the Commission to conclude, on behalf of the Union, the envisaged amendments to the Bonn Agreement concerning the material extension of the scope of the Agreement in relation to Annex VI of the MARPOL Convention and the Accession of the Kingdom of Spain to the Agreement.

The latest version of the envisaged ammendments is presented in the Annexes to the Decision and can be summarised as follows:

The 'MARPOL amendment'

The Contracting Parties to the Bonn Agreement seek to take advantage of the routines and systems for aerial monitoring of oil pollution established under the Agreement to expand those to include surveillance related to compliance monitoring of emissions from ships. By so doing, the Contracting Parties will be able to make the most out of the resources already used for aerial monitoring and surveillance for oil spills and form the basis for a holistic system for environmental monitoring of the North Sea and its approaches.

The adoption of the decision to conclude the amendment on the extension of the mandate of the Bonn Agreement in relation to Annex VI to the MARPOL Convention would improve

joint surveillance, monitoring and reporting of ship emissions in the North Sea area. Such coordinated activity within the Agreement would contribute to lower the risks to the marine environment and the interests of coastal States and of the Union.

The 'Spain amendment'

This amendment extends the geographical scope of the Agreement to cover the area between the zone of joint responsibility of France and the United Kingdom and the new zone of responsibility of Spain in order to close any gaps between the old boundary of the Bonn Agreement and the new zone of responsibility of Spain. France has accepted the introduction of a new zone of responsibility of France. By including the Bay of Biscay into the area covered by the Bonn Agreement, the Contracting Parties make sure that the main traffic route in Europe connecting the North Sea and the Mediterranean Sea is covered by a commonly coordinated preparedness and response management system.

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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 191(4) and Article 196(1)(c), in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having obtained consent from the European Parliament,

Whereas:

(1) The Agreement for co-operation in dealing with pollution of the North Sea by oil and other harmful substances ('the Bonn Agreement')[4] was concluded by the European Economic Community by Council Decision 84/358/EEC[5] and entered into force on 1 September 1989. The Bonn Agreement was amended in 1989. Those amendments were approved by Council Decision 93/540/EEC[6] and entered into force on 1 April 1994.

(2) On 7 October 2019, the Council authorised the Commission to conduct negotiations on behalf of the Union with regard to amendments to the material and geographical scope of the Bonn Agreement.

(3) In accordance with Article 16(1) of the Bonn Agreement, the Contracting Parties considered a proposal for an amendment to extend the scope of application of the Bonn Agreement to improve cooperation on surveillance in respect of the requirements of Annex VI to the International Convention for the Prevention of Pollution from Ships ('the MARPOL Convention')[7] . In addition, the Contracting Parties also considered the amendments to the Bonn Agreement and its Annex due to the accession of Spain to this Agreement in accordance with Article 20 thereof.

(4) The Commission has, in accordance with the Council Decision, negotiated those amendments to the Bonn Agreement, which have been adopted by unanimous vote by two decisions at the thirty-first meeting of the Contracting Parties to the Bonn Agreement held in Bonn from 9 to 11 October 2019.

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4 Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement) (OJ L 188, 16.7.1984, p. 9).

5 Council Decision 84/358/EEC of 28 June 1984 concerning the conclusion of the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (OJ L 188, 16.7.1984, p. 7).

6 Council Decision 93/540/EEC of 18 October 1993 approving certain amendments to the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement) (OJ L 263, 22.10.1993, p. 51).

7 International Convention for the Prevention of Pollution from Ships, signed in London on 2 November 1973, as supplemented by the Protocol of 17 February 1978.

(5) Those amendments to the Bonn Agreement should be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The amendments to the Agreement for co-operation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement) with regard to the extension of its material and geographical scope of application, which were adopted by the Contracting Parties at their thirty-first meeting held in Bonn from 9 to 11 October 2019, are hereby approved on behalf of the Union.

The text of the amendments is set out in the two Decisions adopted by the Contracting Parties, attached to this Decision.

Article 2

The European Commission is authorised to proceed, on behalf of the European Union, to the deposit of the instrument of approval provided for in Article 16 of the Agreement, in order to express the consent of the European Union to be bound by those amendments.

Article 3

This Decision shall enter into force on the day of its adoption[8].

Done at Brussels,

For the Council
The President

[8] The date of entry into force of the amendments will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.