EUROPEAN
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2021/0305 (NLE)

Proposal for a

COUNCIL DECISION

concerning the position to be taken on behalf of the Union in the annual consultations with the United Kingdom to agree total allowable catches

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on behalf of the Union in the annual consultations with the United Kingdom to establish total allowable catches (TACs) applicable to stocks shared between the Union and the United Kingdom ('the parties').

2. CONTEXT OF THE PROPOSAL

On 1 May 2021, 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 ('TCA')[1] entered into force.

The parties agreed to cooperate with a view to ensuring that fishing activities for shared stocks in their 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.

The parties share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce maximum sustainable yield ('MSY').

Pursuant to Article 498 TCA, the parties are to hold annual consultations to agree on TACs applicable to shared stocks for the following year or years. The Commission will engage in these annual consultations with the United Kingdom on behalf of the Union.

The Common Fisheries Policy ('CFP') Regulation[2] requires the Union to ensure that fishing and aquaculture activities are environmentally sustainable in the long term and managed in a way that is consistent with achieving economic, social and employment benefits, and contributing to the availability of food supplies. It also requires the Union to apply the precautionary approach to fisheries management and to aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels that can produce MSY.

The CFP Regulation further requires the Union to 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 contribute to more selective fishing, the avoidance and reduction, as far as possible, of unwanted catches and to fishing with low impacts on marine ecosystem and fishery resources.

Article 28 of the CFP Regulation specifically requires the Union to apply those objectives and principles in the conduct of its external fisheries relations. Under Article 33 of that regulation, the Union is to make every effort to agree common arrangements for the fishing of shared stocks with a view to making sustainable management possible.

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1 OJ L 149, 30.4.2021, p. 10.

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).

Throughout the annual consultation process, the regular and full involvement of the Council is to be ensured at appropriate junctures by means of coordination and cooperation between the Council and the Commission. To this end, the Commission should transmit to the Council, or its preparatory bodies, sufficiently in advance of the annual consultations, a detailed document, based on the latest scientific information and other relevant information, setting out the Union's position for discussion and endorsement on the Union's behalf.

The Commission will also seek the Council's guidance before the annual consultations with the UK are concluded. The Commission's services will meet with the Fisheries Working Party in a timely manner before each round of consultations, *inter alia*, to present and discuss the way forward, and will report to it throughout the annual consultations. Member States will be invited to participate as members of the EU delegation.

In line with Article 218(10) TFEU and Council Decision (EU) 2021/689[3], the European Parliament is to be immediately and fully informed, subject to the necessary arrangements in order to preserve confidentiality. As a general rule, the Commission will provide the information to the European Parliament through the responsible parliamentary committee.

3. LEGAL BASIS

3.1. Procedural legal basis

3.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union ('TFEU') provides for the adoption by the Council of 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'.

3.1.2. Application to the present case

In line with the TCA, the Union is to consult with the United Kingdom on the joint management of shared marine biological resources (in particular shared fish stocks). This obligation is in line with Article 63 of the United Nations Convention on the Law of the Sea.

The annual consultations are needed for the parties to agree on fishing opportunities and intrinsically linked conditions pursuant to Articles 498(2), 498(4) (a) to (d) and 498(6) TCA.

The envisaged act does not supplement or amend the institutional framework of the TCA. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

3.2. Substantive legal basis

3.2.1. 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

[3] Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, OJ L 149, 30.4.2021, p. 2-9.

Union'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 must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

3.2.2. Application to the present case

The main objective and content of the envisaged act relate to the setting of annual fishing opportunities for stocks shared between the Union and the United Kingdom.

Therefore, the substantive legal basis of the proposed decision is Article 43(3) TFEU.

3.3. Conclusion

The legal basis of the proposed decision should be Article 43(3) TFEU, in conjunction with Article 218(9) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 43(3), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Pursuant to Council Decision (EU) 2021/689[1], 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 'Agreement') applies from 1 May 2021.

(2) Under Article 494 of the Agreement, the Union and the United Kingdom (the 'Parties') agreed to cooperate with a view to ensuring that fishing activities for shared stocks in their 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. The Parties share 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').

(3) Pursuant to Article 498 of the Agreement, the Parties are to hold annual consultations to agree on total allowable catches ('TACs') for shared stocks.

(4) The Commission should carry out the annual consultations on behalf of the Union and on the basis of Union positions to be established by the Council in accordance with the relevant Treaty provisions.

(5) The regular and full involvement of the Council and its preparatory bodies in the process of annual consultations with the United Kingdom on fixing fishing opportunities for the stocks in question should be ensured by means of extensive coordination and cooperation between the Council and the Commission, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union ('TEU').

(6) The European Parliament is to be immediately and fully informed, as provided for in Article 218(10) TFEU, to allow it to exercise fully its prerogatives in accordance with the Treaties.

[1] Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information (OJ L 149, 30.4.2021, p. 2).

(7) Article 2(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council[2] requires the Union 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.

(8) Article 2(2) of Regulation (EU) No 1380/2013 requires the Union to apply the precautionary approach to fisheries management and aim to ensure that exploitation of living marine biological resources restores and maintains population of harvested species above levels that can produce MSY.

(9) Point (j) of Article 2(5) of Regulation (EU) No 1380/2013 requires that fisheries management should be coherent with the objective of achieving a good environmental status as set out in Directive 2008/56/EC of the European Parliament and of the Council[3]. Point (a) of Article 2(5) of Regulation (EU) No 1380/2013, read in conjunction with Article 7(1)(d), further requires the Union to gradually eliminate discards by, *inter alia*, promoting fishing methods that contribute to more selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, as well as fishing with low impact on marine ecosystem and fishery resources.

(10) Point (c) of Article 3 of Regulation (EU) No 1380/2013 provides that the Union is to take management and conservation measures based on the best available scientific advice.

(11) Article 28 of Regulation (EU) No 1380/2013 provides that the Union is to apply the objectives and principles set out in Articles 2 and 3 thereof, including support for the development of scientific knowledge and advice, in the conduct of its external fisheries relations, and that the provisions on external policy set out in that Regulation are without prejudice to specific provisions adopted under Article 218 TFEU.

(12) Article 33 of Regulation (EU) No 1380/2013 lays down principles and objectives for the management of stocks of common interest to the Union and third countries, and agreements on exchange and joint management.

(13) In view of the evolving nature of fishery resources covered by the Agreement and the need for the Union's position to take account of new developments, including new scientific and other relevant information presented before or during the annual consultations, procedures should be established for the the year-to-year specifications of the Union position in those consultations. Those procedures should be in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) TEU.

(14) It is therefore appropriate to establish the position to be taken on behalf of the Union in the annual consultations with the United Kingdom, as the outcome of those consultations will be implemented into Union law,

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[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).

[3] Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on behalf of the Union in the annual consultations with the United Kingdom on fishing opportunities for shared stocks under Article 498 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 (the 'Agreement') is set out in Annex 1.

2. The specifications of the Union's position, as referred to in paragraph 1, shall be conducted on an annual basis in accordance with Annex II.

Article 2

The regular and full involvement of the Council throughout the annual consultations shall be ensured by means of extensive coordination and cooperation between the Council and the Commission.

Article 3

The Council shall assess and, where appropriate, revise the Union position referred to in Article 1 on a proposal from the Commission, by 30 June 2026.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President