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2017/0092 (NLE)

Proposal for a

COUNCIL DECISION

establishing the position to be adopted, on behalf of the European Union, in the annual Conference of the Parties to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, and repealing Decision 11724/12

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Poland is a Contracting Party to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (Bering Sea Convention). According to Article 6(9) of the Accession act¹, fisheries agreements concluded by the new Member States with third countries are managed by the Union and the Union should implement any decisions established under the Convention.

Within the Bering Sea Convention, the Annual Conference of the Parties is responsible for establishing an international regime for conservation, management and optimum utilization of Pollock resources in the Convention area. It also seeks to restore the Pollock resources in the Bering Sea at yields that will permit their maximum sustainable yield, and also gather and examine factual information on Pollock and other living marine resources in the Bering Sea.

Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union, the position to be adopted on behalf of the Union in Regional Fisheries Management Organisations (RFMOs) when they are called upon to adopt acts having legal effects, with the exception of acts supplementing or amending their institutional framework, must be adopted by Council Decision, on a proposal from the Commission.

Such position within the RFMOs is currently established according to a two tier approach. A Council Decision sets out the guiding principles and orientations of the Union's position on a multiannual basis, whereas it is thereafter adjusted for each annual meeting by Commission non-papers to be discussed in the Council Working Party.

As regards the Bering Sea Convention, Council Decision 11724/12 of 29 June 2012 provides for a review of the Union's position before the 2016 annual meeting. Therefore, this proposal aims at setting out the Union's position within the Bering Sea Convention for the period 2017-2021 and thereby replacing Council Decision 11724/12 of 29 June 2012, which is covering the period 2012-2016.

• Consistency with existing policy provisions in the policy area

This revision aims at incorporating the principles and orientations of the new Common Fisheries Policy (CFP) as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council², taking also into account the objectives of the Commission Communication on the external dimension of the CFP³. Moreover, the Union's position has been adjusted to the Lisbon Treaty.

As it is the case for the current one, the following position contains general principles and orientations and to the extent needed the specificities of the Bering Sea Convention. In addition, the standard process for the year to year specification of the Union position has been incorporated as requested by Member States.

Council Decision 7277/16 of 11 April 2016 authorised the Republic of Poland to negotiate, in the interest of the Union, an amendment to the Bering Sea Convention with a view for the

¹ OJ L 236 of 23.09.2003, page 33.

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 of 28/12/2013, p.22).

³ COM(2011) 424 of 13.7.2011.

Union to becoming a contracting party to that Convention. This mandate is currently being implemented. It is understood that upon the acceptance of the Union as a full contracting party to the Bering Sea Convention, the Republic of Poland will withdraw its membership from the Convention.

- **Consistency with other Union policies**

N/A

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The following Decision is based on the Treaty on the Functioning of the European Union, and in particular Article 43(2), in conjunction with Article 218(9) which provides that the Council, on a proposal from the Commission shall adopt a decision 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. This shall apply to the position to be adopted by the Commission, on behalf of the Union, in the Conference of the Parties to the Bering Sea Convention.

Regulation (EU) No 1380/2013 of the European Parliament and of the Council is the legal basis setting up the principles to be reflected in this position.

The following Decision will replace Council Decision 11724/12 of 29 June 2012, which is covering the period 2012-2016.

- **Subsidiarity (for non-exclusive competence)**

N/A

- **Proportionality**

N/A

- **Choice of the instrument**

Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union, the position to be adopted on behalf of the Union in Regional Fisheries Management Organisations (RFMOs) when they are called upon to adopt acts having legal effects, with the exception of acts supplementing or amending their institutional framework, must be adopted by Council Decision, on a proposal from the Commission.

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

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

N/A

- **Stakeholder consultations**

N/A

- **Collection and use of expertise**

N/A

- **Impact assessment**

N/A

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

N/A

4. BUDGETARY IMPLICATIONS

N/A

5. OTHER ELEMENTS

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

N/A

- **Explanatory documents (for directives)**

N/A

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

N/A

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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) Article 38 of the Treaty on the Functioning of the European Union, in conjunction with Article 39(1)(d) thereof, provides that one of the objectives of the Common Fisheries Policy is to assure the availability of supplies.
- (2) Article 2 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁴ provides that the Common Fisheries Policy shall 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 shall apply the precautionary approach to fisheries management, and shall 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 also provides that the Union shall aim to take management and conservation measures based on best available scientific advice, to promote fishing methods that contribute to more selective fishing and the avoidance and reduction, as far as possible, of unwanted catches, to fish with low impact on the marine ecosystem and fishery resources and to gradually eliminate discards. Besides, Article 28 of Regulation (EU) No 1380/2013 specifically provides that these principles shall be applied by the Union in its external policy.
- (3) Poland is a Contracting Party to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (hereinafter "the Bering Sea Convention"). The Union is not a Party to that Convention. In accordance with Article 6(9) of the Accession act⁵, fisheries agreements concluded by the new Member

⁴ 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 of 28.12.2013, p.22).

⁵ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236 of 23.9.2003, p. 33).

States with third countries are managed by the Union and the Union should implement any decisions established under the Convention.

- (4) Council Decision 7277/16 of 11 April 2016 authorised the Republic of Poland to negotiate, in the interest of the Union, an amendment to the Bering Sea Convention with a view for the Union to becoming a contracting party to that Convention. That mandate is currently being implemented. It is understood that upon the acceptance of the Union as a full contracting party to the Bering Sea Convention, the Republic of Poland will withdraw its membership from the Convention.
- (5) On 10 July 2012, the Council adopted Decision 11724/12 establishing the position to be adopted on behalf of the European Union in the framework of the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea.
- (6) Decision 11724/12 provides that the position established therein is to be reviewed at the latest for the Annual Conference of the Parties to the Bering Sea Convention in 2016. It is therefore appropriate to repeal Decision 11724/12 and to replace it by a new Decision.
- (7) In view of the evolving nature of Pollock resources in the Bering Sea Convention Area and the consequent need for the position of the Union to take account of new developments, including new statistical, biological and other information presented before or during the Annual Conference of the Parties, procedures must be established, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) TEU, for the year-to-year specification of the Union position.
- (8) The EU not being a party to the Bering Sea Convention, the Republic of Poland, represents the EU at the annual Conference of the Parties to the Bering Sea Convention. Therefore, this Decision is addressed to the Republic of Poland.
- (9) Upon accession of the EU to the Bering Sea Convention, the Commission, in accordance with Articles 218 and 3(1) TFEU, shall represent the EU in the annual Conference of the Parties to the Bering Sea Convention. Therefore, from that moment this Decision shall be addressed to the Commission.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union in the annual Conference of the Parties to the Bering Sea Convention, when that body is called upon to adopt decisions having legal effects, is set out in Annex I.

Article 2

The year-to-year specification of the Union position to be taken in the annual Conference of the Parties to the Bering Sea Convention shall be established in accordance with Annex II.

Article 3

1. The Union 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 Conference of the Parties to the Bering Sea Convention in 2022.
2. In the case of accession of the EU to the Bering Sea Convention, paragraph 1 of this Article shall continue to apply for the remaining of the period foreseen in that paragraph.

Article 4

Decision 11724/12 is repealed.

Article 5

1. This Decision is addressed to the Republic of Poland.
2. In the circumstances foreseen in Article 3(2), this Decision shall be addressed to the European Commission which shall represent the EU at the Conference of the Parties to the Bering Sea Convention.

Done at Brussels,

For the Council
The President