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2019/0058 (NLE)

Proposal for a

COUNCIL DECISION

**concerning the position to be taken 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 9782/17**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the Union's behalf at meetings of the annual Conference of the Parties to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea for the period 2019-2023 in connection with the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea

The Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (Bering Sea Convention) aims, by establishing the annual Conference of the Parties to the Convention, to ensure the long-term conservation and sustainable use of pollock resources in the Convention area. The Convention entered into force on 8 December 1995.

The Republic of Poland is a contracting party to the Bering Sea Convention. The Union is not a party to the Convention. In accordance with Article 6(9) of the Accession Act¹, fisheries agreements that Member States have concluded with non-EU countries are to be managed by the Union and the Union is to implement any decisions established under them. t

Council Decision 7277/16 of 11 April 2016 authorised Poland to negotiate, in the interest of the Union, an amendment to the Bering Sea Convention with a view to the Union becoming a contracting party. That mandate is currently being implemented. It is understood that, once the Union is accepted as a full contracting party, Poland will withdraw its membership.

2.2. The annual Conference of the Parties

The annual Conference of the Parties is the body established by the Bering Sea Convention to be responsible for the management and conservation of pollock resources in the Convention area. It adopts conservation and management measures to ensure the long-term conservation and sustainable use of fishery resources under its purview.

As a member of the annual Conference of the Parties, Poland has participation and voting rights. As the Union is not a party to the Convention, Poland represents it at the annual Conference of the Parties. The annual Conference of the Parties usually takes its decisions by consensus.

2.3. Decisions of the annual Conference of the Parties

The annual Conference of the Parties has the authority to adopt measures for the fisheries under its purview and these are binding on the contracting parties.

The measures agreed by the contracting parties enter into force immediately after the contracting parties have been notified of them.

¹ 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, 23.9.2003, p. 33).

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

The position to be adopted on behalf of the Union at the annual meetings of regional fisheries management organisations (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 and it is subsequently adjusted for each annual meeting by Commission non-papers to be discussed in the Council Working Party.

For the annual Conference of the Parties, this approach is implemented by Council Decision 9782/17 of 30 May 2017, which sets out the Union's position in the Bering Sea Convention for the period 2017-2021. The Decision contains general principles and orientations, but also takes into account to the extent possible the specificities of the Bering Sea Convention. In addition, it sets out the standard process for establishing the Union's position year by year, as requested by Member States.

Decision 9782/17 does not provide for a review of the Union's position in the annual Conference of the Parties before the 2022 annual meeting. However, the vast majority of the Council Decisions setting out the Union's positions in the various RFMOs to which it is a contracting party are due for revision before the 2019 annual meetings of those RFMOs. Therefore, to promote coherence among the Union's position in all RFMOs and to synchronise the timing for the revision procedures, it is appropriate to bring forward the revision of the Union's position in the annual Conference of the Parties for the period 2019-2023 and thereby replace Decision 9782/17.

Decision 9782/17 incorporated 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, also taking into account the objectives set in the Commission Communication on the external dimension of the CFP³. Moreover, it adjusted the Union's position to the Lisbon Treaty.

The current revision takes into consideration, in connection with impacts of fishing, of the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a *European strategy for plastics in a circular economy*⁴, the Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on *International ocean governance: an agenda for the future of oceans*⁵ and the Council conclusions on that Joint Communication⁶.

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 Union's behalf in a body set up by

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 COM(2018) 28 final, 16.1.2018.

⁵ JOIN(2016) 49 final, 10.11.2016.

⁶ 7348/1/17 REV 1, 24.3.2017.

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 effect under international law, but are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’⁷.

4.1.2. *Application to the present case*

The annual Conference of the Parties is a body set up by an agreement, namely the Bering Sea Convention.

The acts that the annual Conference of the Parties is called upon to adopt constitute acts having legal effects. The envisaged acts are to be binding under international law in accordance with the Bering Sea 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 (IUU) fishing⁸;
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy⁹; and
- Council Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets¹⁰.

The envisaged acts do not supplement or amend the institutional framework of the Bering Sea 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 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 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 Decision 9782/17.

4.3. **Conclusion**

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

⁷ 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.

⁸ OJ L 286, 29.10.2008, p. 1.

⁹ OJ L 343, 22.12.2009, p. 1.

¹⁰ OJ L 347, 28.12.2017, p. 81.

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concerning the position to be taken 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 9782/17

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) The Republic of Poland is a Contracting Party to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (Bering Sea Convention). The Union is not a Party to that Convention. In accordance with Article 6(9) of the Accession act¹¹, fisheries agreements concluded by Member States with third countries are managed by the Union and the Union should implement any decisions established under the Bering Sea Convention.
- (2) 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.
- (3) The annual Conference of the Parties to the Bering Sea Convention (the annual Conference of the Parties) is responsible for the management and conservation of the Pollock Resources in the Bering Sea Convention Area. Such measures may become binding upon the Union.
- (4) Regulation (EU) No 1380/2013 of the European Parliament and of the Council¹² 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

¹¹ 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, 23.9.2003, p. 33.

¹² 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).

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 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.

- (5) As stated in the Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on *International ocean governance: an agenda for the future of oceans*¹³, and the Council conclusions on that Joint communication¹⁴, the promotion of measures to support and enhance the effectiveness of regional fisheries management organisations (RFMOs) and, where relevant, improve their governance is central to the Union's action in these fora.
- (6) The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a *European Strategy for Plastics in a Circular Economy*¹⁵, refers to specific measures to reduce plastics and marine pollution as well as the loss or abandonment at sea of fishing gear.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in in the annual Conference of the Parties for the period 2019-2023 as conservation and enforcement measures adopted by the annual Conference of the Parties will be binding on the Union and capable of decisively influencing the content of Union law namely, Council Regulation (EC) No 1005/2008¹⁶; Council Regulation (EC) No 1224/2009¹⁷; and Regulation (EU) 2017/2403 of the European Parliament and of the Council¹⁸.
- (8) Council Decision 9782/17¹⁹ does not provide for a review of the Union's position within the annual Conference of the Parties before the 2022 annual meeting. However, the vast majority of the Council Decisions setting the Union's position within the different RFMOs to which the Union is a Contracting Party are due for revision before

¹³ JOIN(2016) 49 final of 10.11.2016.

¹⁴ 7348/1/17 REV 1 of 24.3.2017.

¹⁵ COM(2018) 28 final, 16.1.2018.

¹⁶ Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) 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).

¹⁷ 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) 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).

¹⁸ 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).

¹⁹ Council Decision of 30 May 2017 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 the Council Decision of 10 July 2012 on 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.

the 2019 annual meetings of those RFMOs. Therefore, to promote improved coherence amongst the Union's position in all RFMOs and to streamline the revision process, it is appropriate to bring forward the revision of Council Decision 9782/17 and to repeal it replacing it by a new Decision for the period 2019-2023.

- (9) In view of the evolving nature of fishery 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 scientific and other relevant information presented before or during the meetings of the annual Conference of the Parties, procedures should be established, 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), for the year-to-year specification of the Union's position for the period 2019-2023.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the annual Conference of the Parties to the Bering Sea Convention is set out in Annex I.

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the annual Conference of the Parties to the Bering Sea Convention 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 Conference of the Parties to the Bering Sea Convention in 2024.

Article 4

Decision 9782/17 of 30 May 2017 is repealed.

Article 5

1. This Decision is addressed to the Republic of Poland.
2. In the case of accession of the Union to the Bering Sea Convention, this Decision shall be addressed to the Commission which shall represent the Union at the meetings of the annual Conference of the Parties to the Bering Sea Convention.

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

Done at Brussels,

For the Council
The President