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COM(2019) 284 final

2019/0138 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Western Central
Atlantic Fishery Commission**

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 parties of the Western Central Atlantic Fishery Commission (WECAFC) in 2019-2023 on the adoption of non-binding resolutions and recommendations regarding the conservation and management of living marine resources.

2. CONTEXT OF THE PROPOSAL

2.1. The FAO Resolution establishing the Western Central Atlantic Fishery Commission

The WECAFC was established in 1973 by Resolution 4/61 of the Council of the Food and Agriculture Organization (FAO) of the United Nations, under Article VI (1) of the FAO Constitution. The WECAFC aims to promote the effective conservation, management and development of the living marine resources in its area of competence in accordance with the FAO Code of Conduct for Responsible Fisheries, and address common problems of fisheries management and development faced by its members.

The European Union is a member of the WECAFC¹, as are France, the Netherlands, Spain and the United Kingdom.

2.2. The Western Central Atlantic Fishery Commission

The WECAFC is a consultative technical and regional fisheries body (RFB) established under Article VI (1) of the FAO Constitution. The WECAFC's Secretariat is managed and financed by the FAO. Its main functions include promoting, coordinating and facilitating governance and activities related to the conservation and management of living marine resources in its area of competence. The WECAFC can also provide advice to its members and competent fisheries organisations on fisheries management, monitoring, control and surveillance. It can also assist its members, where appropriate, in the implementation of relevant international fisheries instruments and, on request, in the conservation, management and development of transboundary and straddling stocks under their respective national jurisdictions².

As a member, the Union has participation and voting rights. The WECAFC endeavours to take its decisions by consensus. In other cases, decisions are taken by a majority of the votes cast, except as otherwise provided by its rules of procedure.

2.3. Decisions adopted by the Western Central Atlantic Fishery Commission

Under Article 6(h) of its revised statutes, the WECAFC gives advice on management measures ('recommendations' and 'resolutions') to member governments and competent fisheries organisations. Because of its advisory status, the WECAFC's decisions are not binding on its members.

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

Consistent with the procedures applicable to regional fisheries management organisations (RFMOs), the position to be adopted on behalf of the Union at the annual meetings of RFBs

¹ Council Decision of 25 November 1991 on the accession of the European Economic Community to the Food and Agriculture Organization of the United Nations (FAO).

² FAO Resolution 1/131 of 2006 amending the WECAFC Statutes and revising FAO Resolutions 4/61 of 1973 and 3/74 of 1978.

such as the WECAFC shall be established using 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 before each annual meeting by Commission non-papers to be discussed in the Council working party.

This proposal for a Decision:

contains general principles and orientations, but as far as possible also takes account of the specific characteristics of the WECAFC.

- sets out the standard process for establishing the Union's position year by year, as requested by Member States;
- incorporates the principles and orientations of the new common fisheries policy, as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council³, also taking into account the objectives set out in the Commission's Communication on the external dimension of the common fisheries policy⁴;
- takes account of the Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission on 'International ocean governance: an agenda for the future of oceans'⁵ and the Council conclusions on it⁶; and
- takes account 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 economy⁷.

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 ('the Treaty') provides for 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'.

The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'⁸.

4.1.2. Application to this case

The WECAFC is a technical and regional fisheries body set up by FAO resolution 4/61 of 1973, under Article VI (1) of the FAO Constitutions. While the WECAFC decisions

³ 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).

⁴ COM(2011) 424, 13.7.2011.

⁵ JOIN(2016) 49 final, 10.11.2016.

⁶ 7348/1/17 REV 1, 24.3.2017.

⁷ COM(2018) 28 final, 16.1.2018.

⁸ 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.

(‘recommendations’ and ‘resolutions’) are not binding on its members, acts that the WECAFC is called upon to adopt do constitute acts capable of decisively influencing the content of the legislation adopted by the EU legislature.

The envisaged act does not supplement or amend the institutional framework of the agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) of the Treaty.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) of the Treaty depends primarily on the objective and content of the envisaged act in respect of which a position is being 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, with the other being merely incidental, the decision under Article 218(9) of the Treaty must have a single substantive legal basis, which is that required by the main aim or component.

4.2.2. Application to this case

The main objective and content of the envisaged act relates to fisheries. Regulation (EU) No 1380/2013 is the legal basis that sets out the principles to be reflected in this position.

Therefore, the substantive legal basis of the proposed decision is Article 43(2) of the Treaty.

4.3. Conclusion

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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'), 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 European Union is a member of the Western Central Atlantic Fishery Commission (WECAFC), a regional fishery commission of the Food and Agriculture Organization of the United Nations (FAO), established under Article VI (1) of the FAO Constitution.
- (2) The European Union is a member of the FAO.⁹
- (3) Pursuant to Article 6(h) of its revised statutes, the WECAFC may adopt recommendations and resolutions. Because of its advisory status, the WECAFC's decisions are not binding on its members.
- (4) The WECAFC, during its sessions of the Commission, is to adopt recommendations and resolutions on the conservation and management of living marine resources.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in the WECAFC in 2019-2023, as the WECAFC is called upon to adopt non-binding acts that are capable of decisively influencing the content of the legislation adopted by the EU legislature. Most Council Decisions setting out the Union's position within RFMOs to which the Union is a contracting party are due for revision before the 2024 annual meeting of those RFMOs. Therefore, to improve coherence among Union positions in all RFMOs and RFBs and to streamline the revision process, this Council decision should be revised at the latest before the annual meeting of the WECAFC in 2024.
- (6) The Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission on 'International ocean governance: an agenda for the future of oceans'¹⁰, and the Council conclusions on it¹¹, set out that the promotion of measures to support and enhance the effectiveness of regional fisheries management organisations and, where relevant, improve their governance and strengthen cooperation in key ocean areas in order to fill regional governance gaps, is central to the Union's action in these fora.

⁹ Council Decision of 25 November 1991 on the accession of the European Economic Community to the Food and Agriculture Organization of the United Nations (FAO).

¹⁰ JOIN(2016) 49 final of 10.11.2016.

¹¹ 7348/1/17 REV 1 of 24.3.2017.

- (7) As stated in 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 economy¹², specific measures to reduce plastics and marine pollution as well as the loss or abandonment at sea of fishing gear should be taken.
- (8) In view of the evolving nature of fishery resources in the WECAFC's area 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 meetings of the WECAFC, procedures should be established for the year-to-year specification of the Union's position in 2019-2023 that are in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the sessions of the Western Central Atlantic Fishery Commission (WECAFC) is set out in Annex I.

Article 2

The year-to-year specification of the Union's position to be taken in the sessions of the WECAFC 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 before any session of the WECAFC in 2024.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

¹² COM(2018) 28 final, 16.1.2018.