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2021/0036 (NLE)

Proposal for a

COUNCIL DECISION

concerning the position to be taken on behalf of the European Union in the consultations with the United Kingdom to agree on total allowable catches for 2021 and for certain deep sea stocks for 2021 and 2022

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the Union's behalf in the consultations with the United Kingdom for establishing total allowable catches (TACs) for the year 2021 and for certain deep sea stocks for the years 2021-2022.

2. CONTEXT OF THE PROPOSAL

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 TCA Agreement')¹, provisionally entered into force on 1 January 2021².

The Union and the United Kingdom ('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.

Both 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.

Pursuant to Article FISH.6 of the TCA, the Parties are to hold consultations to agree on TACs for the following year.

Therefore, the Commission will engage, on behalf of the Union, in consultations with the United Kingdom on the setting of the fishing opportunities for shared stocks for 2021 and for 2021-2022 for certain deep sea stocks.

Regulation (EU) No 1380/2013 of the European Parliament and of the Council³ 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 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

¹ OJ L 444, 31.12.2020, p. 14–1462.

² Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application 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 444, 31.12.2020, p. 2–10.

³ 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).

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, Article 28 of 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. According to its Article 33, the Union shall also make every effort to reach common arrangements for fishing of shared stocks with a view to making the sustainable management possible.

Building on the approach in the Commission non-paper submitted to the Council on 7 January 2021 (doc. 5031/21) and the revised non-paper, with additional clarifications on the process, submitted to the Council on 14 January 2021 (doc. 5031/1/21 REV 1), and taking account of the guidance of the Council as articulated in document 5543/21 of 26 January 2021, it is appropriate to establish the position to be taken on the Union's behalf in the consultations with the United Kingdom for establishing TACs for shared stocks for the year 2021 and for certain deep sea stocks for the years 2021-2022.

During the entire consultation process, the regular and full involvement of the Council is to be ensured at appropriate junctures by means of an extensive coordination and cooperation between the Council and the Commission during this process. The Commission will seek endorsement of the Union position in cooperation with the Council at the appropriate level, including guidance before consultations with the UK are concluded. The Commission services will discuss with the Fisheries Working Party in a timely manner before each round of consultations, including by presenting the way forward for the next round, and will report to it after each round of consultations. Member States delegates will be invited to participate as members of the EU delegation. In situ coordination will be ensured.

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

The position to be taken on behalf of the Union at the meetings for consultations with the United Kingdom in view of establishing the TACs for shared stocks for 2021 and certain deep-sea stocks for 2021 and 2022.

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 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'.

It is appropriate to establish the position to be taken on the Union's behalf on the arrangements made between the Parties implementing the TAC on the fishing opportunities within the applicable EU legal framework.

4.1.2. Application to the present case

Pending the ratification and entry into force of the EU-UK Trade and Cooperation Agreement ('TCA'), the TCA applies provisionally as of 1 January 2021. In line with the TCA, the Union needs to consult with the United Kingdom on the joint management of shared marine biological resources for 2021, notably shared fish stocks. Such obligation is in line with Article 63 of the UN Convention on the Law of the Sea (UNCLOS).

Consultations between the Union and the United Kingdom are to take place as the parties need to seek an arrangement pursuant to Article FISH.6(2), FISH.6(4) (a) to (d) and FISH.6(6) of the TCA on the fishing opportunities and intrinsically linked conditions for the calendar year 2021 and for 2021-2022 for certain deep-sea stocks, as of 1 January 2021.

While the Union has set fishing opportunities from 1 January 2021 as established by the Council⁴, these should be agreed with the United Kingdom under article FISH.6 TCA.

The envisaged acts do not supplement or amend the institutional framework of the TCA. 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 the setting of fishing opportunities.

Therefore, the substantive legal basis of the proposed Decision is Article 43(3) TFEU. Regulation (EU) No 1380/2013 is the legal basis setting out the principles to be reflected in this position.

4.3. Conclusion

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

⁴ Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, OJ L 31, 29.1.2021, pp. 31–192.

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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(3), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (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 TCA')⁵, was signed on 30 December 2020 by the Union acting upon authorisation by Council Decision (EU) 2020/2252⁶ and is provisionally applicable as of 1 January 2021.
- (2) Under Article FISH.2 of the TCA, the Union and the United Kingdom 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. Both 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.
- (3) In line with the TCA, the Union needs to consult with the United Kingdom on the joint management of shared marine biological resources, notably shared fish stocks.
- (4) Pursuant to Article FISH.6 of the TCA, the Union and the United Kingdom are to hold consultations to agree on total allowable catches ('TACs') for shared fish stocks for 2021 and for certain deep-sea stocks for 2021 and 2022.
- (5) The annual consultations related to fisheries should be carried out by the Commission on the basis of Union positions which are to be established by the Council in accordance with the relevant Treaty provisions.
- (6) The Commission should engage therefore in consultations with the United Kingdom on the setting of such fishing opportunities. The regular and full involvement of the

⁵ OJ L 444, 31.12.2020, p. 14–1462.

⁶ Council Decision (EU) 2020/2252 of 29 December 2020 on the signing, on behalf of the Union, and on provisional application 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 444, 31.12.2020, p. 2–10.

Council in this process is to be ensured by means of an extensive coordination and cooperation between the Council and the Commission.

- (7) The European Parliament should be immediately and fully informed about all stages of the procedure, as provided for in Article 218(10) TFEU in order to allow it to exercise fully its prerogatives in accordance with the Treaties.
- (8) The consultation and reporting requirement should be compatible with the Commission' external representation powers and ensure swift and timely outcome of the consultations. The established working method should also respect the Commission's right of initiative.
- (9) It is for the Council to establish the position to be taken on the Union's behalf in the consultations with the United Kingdom for establishing TACs for shared stocks for the year 2021 and for certain deep sea stocks for the years 2021-2022.
- (10) Article 2(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁷ 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.
- (11) Article 2(2) of Regulation (EU) No 1380/2013 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 population of harvested species above levels, which can produce the maximum sustainable yield. In addition, fisheries management should be coherent with achieving Good Environmental Status under the Marine Strategy Framework Directive (Article 2(5)(j)). Article 2(5) further provides that the Union is to, 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. Article 3(3) of Regulation (EU) No 1380/2013 provides that the Union is to take management and conservation measures based on best available scientific advice. Besides, Article 28 of that 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, and Article 33 of that Regulation (EU) No 1380/2013 provides for the principles and objectives of management of stocks of common interest to the Union and third countries and agreements on exchange and joint management.
- (12) While the Union has set fishing opportunities from 1 January 2021⁸ in accordance with article FISH 7 TCA, these should be agreed with the United Kingdom.
- (13) It is appropriate to establish the position to be taken on the Union's behalf during the consultations, as the result of the consultations should be implemented into the Union law,

⁷ 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.

⁸ Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, OJ L 31, 29.1.2021, pp. 31–192.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the consultations with the United Kingdom on the setting of fishing opportunities for shared stocks for 2021 and for 2021-2022 for certain deep sea stocks is set out in Annex I and II.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*