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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	23 June 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 413 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion of the Agreement between the European Union and the Kingdom of Norway on reciprocal access to fishing in the Skagerrak for vessels flying the flag of Denmark, Norway and Sweden

Delegations will find attached document COM(2016) 413 final.

Encl.: COM(2016) 413 final



EUROPEAN
COMMISSION

Brussels, 23.6.2016
COM(2016) 413 final

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Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and the Kingdom of Norway on reciprocal access to fishing in the Skagerrak for vessels flying the flag of Denmark, Norway and Sweden

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

An Agreement on reciprocal access to fishing in the Skagerrak and Kattegat between Denmark, Norway and Sweden was signed on 19 December 1966 and entered into force on 7 August 1967. This agreement, which was in addition to the 1980 bilateral fisheries agreement between the European Union and Norway, allowed for reciprocal access between those three countries to fish up to 4 nautical miles from their respective baselines in the Skagerrak and Kattegat, which are the waters between the North Sea and the Baltic Sea. Furthermore, the Agreement established that, for the purposes of such fishing, the area in question was deemed to constitute the high seas. Thus the Agreement regulated the relationship between the flag States, on the one hand, and the respective Coastal States, on the other.

The 1966 Agreement was a simple Agreement, which took into account the particular geography of the Skagerrak and Kattegat area in respect of fisheries and recognised that there were practical reasons to allow for a simple access regime for what is essentially a very small area of seas. For that reason, the 1966 Agreement consisted of only three Articles, the first of which defined the area concerned, with the second defining the rights of access and the desire to harmonise technical regulations.

With the accession of Denmark and Sweden to the EU in 1973 and 1995 respectively, the Commission became responsible for the management of this Agreement on behalf of those two Member States. Consultations on the arrangements resulting from this Agreement have been held in parallel with the consultations under the 1980 bilateral fisheries agreement.

The 1966 Agreement remained in force for an initial period of 35 years until 2002 and was subsequently extended for two five-year periods until 2012. Termination of the agreement was possible through giving three years notice by one or other Party prior to the date of expiry of any five-year period.

In view of more recent developments in international fisheries law and, in particular, with the introduction of the UN Convention on the Law of the Sea of 1982 and the UN Fish Stocks Agreement of 1995, Norway considered that the existing agreement was not in conformity with the current provisions of the Law of the Sea. Norway was particularly concerned with regard to the provisions on control. Moreover, they considered that the Agreement was not in harmony with the principles of normal Coastal State jurisdiction pursuant to the UN Convention on the Law of the Sea and did not correspond with modern conservation and management principles.

On 29 July 2009, the Norwegian Foreign Ministry formally informed the Danish authorities, the Depositary Government of the Agreement, that they wished to terminate the Agreement with a formal denunciation in accordance with Article 3(3) of the Agreement. Consequently, the 1966 Agreement expired on 7 August 2012.

Subsequently, Norway entered into formal negotiations with the Commission, on behalf of the European Union, with the aim of establishing a replacement Agreement on reciprocal access to fishing in the Skagerrak and Kattegat area. This new Agreement was initialled on 24 October 2013 and signed on 15 January 2015. It is in conformity with the UN Convention on the Law of the Sea as well as subsequent related provisions in other agreements.

The new Agreement maintains the exclusive access granted to vessels from Denmark, Norway and Sweden to each other's waters outside 4 nautical miles from the baselines. It ensures continued reciprocal access for the two Member States and Norway to the respective waters of the other Parties in the Skagerrak area, whilst at the same time, ensuring sound conservation and management measures for fisheries in the area. Furthermore, it allows for control measures in harmony with the principles of normal Coastal State jurisdiction, as is already the case for fisheries in the North Sea.

- **Consistency with existing policy provisions in the policy area**

In order to guarantee the continuation of access by EU vessels for fishing activities, the Agreement, pending its entry into force, has been applied provisionally up to two years from the date of its signature.

- **Consistency with other Union policies**

The measures proposed are designed in accordance with the objectives and the rules of the Common Fisheries Policy and are consistent with the Union's policy on sustainable development.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 43(2) of the Treaty on the Functioning of the European Union, in conjunction with Article 218(6) (a) thereof.

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

The proposal falls under the Union exclusive competence as referred to in Article 3(1)(d) of the Treaty. The subsidiarity principle therefore does not apply.

- **Proportionality**

The Union action is required to manage straddling stocks fished jointly by Union and Norwegian vessels.

- **Choice of the instrument**

Council Decision.

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

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

Not applicable.

- **Stakeholder consultations**

The Member States concerned were consulted during the consultations with Norway.

- **Collection and use of expertise**

Not applicable.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

Not applicable.

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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(6) (a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament.

Whereas:

- (1) The Union negotiated with the Kingdom of Norway an Agreement on reciprocal access to fishing in the Skagerrak and Kattegat.
- (2) The Agreement between the European Union and the Kingdom of Norway on reciprocal access to fishing in the Skagerrak and Kattegat was signed on 15 January 2015 in accordance with Council Decision 2014/505/EU of 23 July 2014 on the signing on behalf of the Union, and provisional application of the Agreement between the European Union and the Kingdom of Norway on reciprocal access to fishing in the Skagerrak for vessels flying the flag of Denmark, Norway and Sweden ⁽¹⁾.
- (3) The Agreement should be approved on behalf of the Union.

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Kingdom of Norway on reciprocal access to fishing in the Skagerrak for vessels flying the flag of Denmark, Norway and Sweden is hereby concluded on behalf of the Union.

The text of the Agreement is attached to this Decision as Annex 1.

Article 2

¹ OJ L 224, 30.7.2014, p. 1.

The President of the Council shall designate the person(s) empowered to make, on behalf of the Union, the notifications provided for in Article 7 of the Agreement ⁽²⁾, in order to express the consent of the Union to be bound by the Agreement.

²

The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 3

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

Done at Brussels,

*For the Council
The President*