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PECHE 331

## DECLASSIFICATION

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Subject: Modification of the Recommendation for a Council Decision authorizing the Commission to open negotiations with the parties concerned with a view to establishing a framework for the conservation of the marine living resources in some areas of the high seas in the South-West Atlantic

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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11651/97

RESTREINT

PECHE 331

## **REPORT**

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from: Working Party on External Fisheries Policy

dated: 8 October 1997

to: Committee of Permanent Representatives

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prev. doc. n°: 10917/97 PECHE 282

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**Subject: Modification of the Recommendation for a Council Decision authorizing the Commission to open negotiations with the parties concerned with a view to establishing a framework for the conservation of the marine living resources in some areas of the high seas in the South-West Atlantic**

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## **INTRODUCTION**

### Initial Recommendation:

1. On 2 April 1996 the Commission presented to the Council a Recommendation for a Council Decision authorizing the Commission to open negotiations with the parties concerned with a view to establishing a framework for the management of fisheries resources occurring in some areas of the high seas in the South-West Atlantic (doc. 6227/96 PECHE 113).
2. Ensuing discussions in the Working Party on External Fisheries Policy showed that it was appropriate to enlarge the geographical scope of the envisaged Agreement to include the high seas up to the northern limit of the CCAMLR area. However, in doing so, the political sensitivity of the area concerned had to be taken into consideration.

### Modified Recommendation:

3. In these circumstances, the Commission, on 8 July 1997, presented a modified Recommendation. The approach now suggested by the Commission, following bilateral discussions with Member States as well as with third countries, is that of an arrangement encompassing the protection of the living marine resources and the marine fauna and flora in the region, based on the example of the Convention on the Conservation of Antarctic Marine Living Resources of 20 May 1980. This approach provides a formula for the participation of interested States which would leave open in which capacity they are participating, that is, as a Coastal State under Article 8 (5) of the 1995 Straddling Stocks Agreement or as a State interested in the conservation of marine fauna and flora in the region.

### **PROCEEDINGS OF THE WORKING PARTY**

4. The Working Party considered this modified Recommendation on several occasions, most recently on 8 October 1997.
5. Delegations welcomed the objective of the modified Recommendation as a pragmatic approach to a number of politically sensitive questions. The terms of participation of Member States - as suggested by the Commission - in the negotiations to come and in the work of the future organization once established elicited, however, a number of remarks from delegations.

### Terms of participation by Member States

#### Commission's views

6. The Commission representative, with reference to paragraph 6 of the Recommendation, emphasized that, whilst the future arrangement would now encompass the protection of the living marine resources and the marine fauna and flora in the region, the latter components were however only of an ancillary importance in relation to the main competence of that future organization, i.e. the protection of the living marine resources in the area. Since this assignment falls under the exclusive competence of the Community, the Commission would thus represent the Community and the Member States at all stages during the negotiations. With regard to representation in a future South-West Atlantic arrangement proper, the Commission representative recalled that the modified Recommendation constituted a pragmatic solution, based on the CCAMLR model, which took account of the position of Member States with overseas territories in the waters

concerned and fell within the ambit of the arrangement agreed in COREPER in November 1989<sup>(1)</sup>, and the subsequent declaration n° 25 annexed to the Maastricht Treaty regarding the procedure to be followed in such cases.

Member States' positions

7. The United Kingdom delegation expressed support for the Commission's modified Proposal, which it considered as the political way forward for setting up the appropriate organization in the area to the benefit of all concerned (coastal States and distant water fishing nations). This delegation stressed the importance of an early agreement on the Recommendation given the urgent need to establish internationally agreed regulatory measures in the South West Atlantic and confirmed the United Kingdom's readiness to follow the above-mentioned procedures. At the same time, and in line with these procedures, the United Kingdom reserved the right in very exceptional cases to speak separately on behalf of its overseas territories in the waters concerned if divergences were to arise between the interests of the Union and those of the overseas territories.
8. Other delegations, some lifting earlier scrutiny reservations, were also in a position to support this Recommendation.

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<sup>(1)</sup> Cf. doc. 9467/97 RELEX 58.

9. The French delegation maintained a scrutiny reservation, *inter alia* pending further clarification as to the articulation between on the one hand the fact that some issues for negotiation (eg. research, development cooperation, inspection and control arrangements, ...) fell under national competence and on the other hand the exclusive representation claimed by the Commission on behalf of the Community and its Member States in the negotiations.
10. The Spanish delegation also maintained a scrutiny reservation. It explained that its authorities were still studying the various legal implications of the modified Recommendation.

#### Procedural conclusions

11. The President concluded that, in view of delegations' positions, and also taking account of the explicit request to that effect from the United Kingdom delegation, the matter would now be referred to the Committee of Permanent Representatives for consideration.

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