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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the framework of the Convention for the Conservation of Salmon in the North Atlantic Ocean as regards the application for accession to that Convention submitted by the United Kingdom

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Decision establishing the position to be taken on the European Union's behalf in the body established by the Convention for the Conservation of Salmon in the North Atlantic Ocean ("the NASCO Convention") in relation to the accession of the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") to that Convention.

2. CONTEXT OF THE PROPOSAL

On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the European Union, pursuant to Article 50 of the Treaty on European Union. Consequently, the United Kingdom will become a third country and Union law will cease to apply to it either at the date of entry into force of the Withdrawal Agreement or, failing that, on 13 April 2019, unless a later date is decided unanimously by the European Council in agreement with the UK.

Until its withdrawal from the Union, the United Kingdom remains a Member State enjoying all the rights and is bound by all obligations stemming from the Treaties, including the compliance with the principle of sincere cooperation. In its Guidelines of 29 April 2017, the European Council recognised the need, in the international context, to take into account the specificities of the United Kingdom as a withdrawing Member State, provided it respects its obligations and remains loyal to the Union's interests while still a Member State.

The Union and the United Kingdom have negotiated a withdrawal agreement pursuant to Article 50 of the Treaty on European Union, which was endorsed by the European Council of 25 November 2018 (the "Withdrawal Agreement"). The internal procedures for the conclusion of this Agreement are ongoing at the level of the Union¹. Part Four of the Withdrawal Agreement provides for a transition period during which Union law, including international agreements concluded by the Union, will continue to be applicable to and in the United Kingdom, ("transition period"). The Union will inform its international partners of the specific arrangements foreseen in the Withdrawal Agreement under which, during a transition period, the UK would be treated as a Member State for the purposes of the international agreements concluded by the Union, including the NASCO Convention.

The Commission Communication 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan' of 13 November 2018 set out the contingency measures it plans to take if no withdrawal agreement enters into force on the withdrawal date. In that Communication, the Commission listed the actions it considered necessary while recalling that additional actions may be necessary at a later stage.

The European Council (Article 50) reiterated its call, on 13 December 2018 and 21 March 2019, for work on preparedness and contingency at all levels for the consequences of the United Kingdom's withdrawal to be intensified, taking into account all possible outcomes.

The NASCO Convention currently applies to the United Kingdom as a result of the Union being a Contracting Party to this Convention. This will end on the date the United Kingdom is no longer covered by the NASCO Convention as a Member State of the Union.

¹ See Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 47 I, 19.2.2019, p. 1).

The principal objective of the NASCO Convention is “to contribute through consultation and co-operation to the conservation, restoration, enhancement and rational management of salmon stocks, taking into account the best scientific evidence available to it”. The NASCO Convention entered into force on 1 October 1983. The Council of the European Union is Depository for the NASCO Convention.

2.1. The North Atlantic Salmon Conservation Organisation

The North Atlantic Salmon Conservation Organisation is an international organisation established under the NASCO Convention. It was established taking direct account of the specific provisions on anadromous fish stocks of fish set out in Article 66 of the United Nations Convention on the Law of the Sea of 10 December 1982 ("UNCLOS").

The Convention applies to the wild salmon stocks which migrate beyond areas of fisheries jurisdiction of coastal States of the Atlantic Ocean north of 36°N latitude throughout their migratory range.

NASCO is therefore responsible for the regulation of the fishing activity of wild salmon at sea throughout the North Atlantic. It also deals with other relevant questions in respect of the conservation of the wild salmon stocks. In a broader context, NASCO also considers further and appropriate measures for waters under the jurisdiction of the contracting Parties, in order to ensure the survival of the wild Atlantic salmon.

NASCO has legal personality and enjoys in its relations with other international organisations and in the territories of the Contracting Parties such legal capacity as may be necessary to perform its functions and achieve its ends.

2.2. The NASCO

NASCO consists of a council, three regional Commissions (the North American Commission, the North-East Atlantic Commission and the West Greenland Commission) and a Secretariat. The council has representatives from all Contracting Parties to the Convention: Canada, Denmark (in respect of the Faroe Islands & Greenland), the European Union, Norway, the Russian Federation and the United States of America. France (in respect of St. Pierre & Miquelon) attends NASCO's meetings as an observer.

The European Union is a Party to the NASCO Convention² because its subject matter falls within the scope of the Common Fisheries Policy, for which the Union has exclusive competence. The Member States are covered by the NASCO Convention pursuant to Union law.

The European Union is a full member of both the North-East Atlantic Commission and the West Greenland Commission. In the North American Commission, the European Union has the right to submit and vote on proposals for regulatory measures concerning wild salmon stocks originating in Union territories. For this purpose, the Union is deemed to be a member of this Commission insofar as the consideration of such proposals is concerned.

2.3. The envisaged act of the NASCO

The NASCO Convention is open for accession, subject to the approval of the NASCO council, by any State that exercises fisheries jurisdiction in the North Atlantic Ocean or is a State of origin for salmon stocks.

In its letter of 28 February 2019, the United Kingdom submitted an application to the President of the NASCO council, requesting an approval of its accession to the NASCO

² *OJ L 378, 31.12.1982, p. 24.*

Convention. On 11 March 2019, the NASCO Secretariat notified all parties to the Convention, including the European Commission, thereof. In accordance with Article 17 of the NASCO Convention, a prior approval of the NASCO council is needed for the accession of the United Kingdom to be considered valid.

Decisions of the NASCO council are to be taken by a three-quarters majority of the votes of the members present and casting an affirmative or negative vote. A vote can only be taken unless two thirds of the members of the council are present.

Instruments of approval or accession are thereafter to be deposited with the Depositary. For each Party acceding to the NASCO Convention after the deposit of the requisite instruments of ratification, approval or accession, it shall enter into force on the date of deposit of the instrument of accession.

The United Kingdom has clarified that its application was submitted as part of a contingency planning in the absence of a withdrawal agreement. In its application, the United Kingdom specifies that “[i]n the event that the Withdrawal Agreement is signed, ratified and approved [...] the United Kingdom will refrain from depositing its Instrument of Accession to bring about membership of NASCO in its own right with effect from the point of its withdrawal from the European Union.”

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

This Council Decision should enable the Commission to approve, on behalf of the Union, the accession of the United Kingdom to the NASCO Convention, taking into account the following condition: given the uncertainty at present on the date and the terms of the United Kingdom's withdrawal from the Union, the Union's approval to the NASCO should only be communicated when Union law ceases to apply to the United Kingdom.

A core objective of the Common Fisheries Policy, as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council³ is “*to ensure that fishing activities are environmentally, economically and socially sustainable and are managed consistently with the objectives of achieving economic, social and employment benefits, and of restoring and maintaining fish stocks above levels which can produce maximum sustainable yield and that they are contributing to the availability of food supplies*”.

It is in the interest of the Union that the United Kingdom cooperates in the management of salmon stocks in full compliance with the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 ("UNCLOS") and the United Nations Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks of 4 August 1995 ("UNFSA"), or any other international agreement or norm of international law.

Pursuant to Article 66 of the UNCLOS, States in whose rivers anadromous stocks originate have the primary interest in and responsibility for such stocks. The State of origin of anadromous stocks must ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State must cooperate with the State of origin with regard to the conservation and management of such stocks.

³ OJ L 354, 28.12.2013, p. 22.

The State of origin of anadromous stocks and other States fishing these stocks must make arrangements for the implementation of Article 66 of UNCLOS. Such cooperation may be established in the framework of regional fisheries management organisations.

The United Kingdom, as a State of origin and as a State exercising fisheries jurisdiction has legitimate interests within the NASCO Convention Area insofar as the waters under the exclusive economic zone of the United Kingdom and the adjacent high seas fall within the NASCO Convention Area.

The accession of the United Kingdom to the NASCO Convention will allow the United Kingdom to cooperate on the necessary salmon management and conservation measures with due regard to the rights, interests and duties of other countries and the European Union, and to ensure that fishing activities are carried out without resulting in the stock(s) being exploited unsustainably.

In light of the legitimate fishing interests of the United Kingdom in the NASCO Convention Area, the obligation of the United Kingdom to cooperate on the necessary fisheries management, and the need to ensure the binding character of the NASCO Decisions upon accession of the United Kingdom, the Commission recommends that the application by the United Kingdom is accepted.

It is proposed that the Commission be authorised to inform the President of the NASCO council of the Union position in favour of the United Kingdom's accession from the moment Union law ceases to apply to the United Kingdom and to cast its vote along these lines in the context of the NASCO council which will decide on membership of the United Kingdom.

In the event that the United Kingdom withdraws from the Union under the terms of the Withdrawal Agreement and the related transition period, the Union will notify its international partners upon signature of the Withdrawal Agreement, including the other Parties to the NASCO Convention, that during this transition period the United Kingdom is to be treated as a Member State for the purposes of the international agreements to which the Union is a party.

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.'*

The concept of *'acts having legal effects'* includes acts that have legal effects by virtue of the rules of international law. 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'*⁴.

4.1.2. Application to the present case

The NASCO Convention is open for accession, subject to the approval of the NASCO council, by any State that exercises fisheries jurisdiction in the North Atlantic Ocean or is a State of origin for salmon stocks.

⁴ 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.

Decisions of the NASCO council are to be taken by a three-quarters majority of the votes of the members present and casting an affirmative or negative vote. A vote can only be taken unless two thirds of the members of the NASCO council are present.

Accession is effected by the deposit of an instrument of accession with the Depositary and takes effect on the date of its receipt.

The Depositary informs all Signatories and all acceding Parties of the instruments of approval or accession deposited, and notifies the date and the Parties in respect of which this Convention enters into force.

The accession of the United Kingdom, once effective, will be binding under international law in accordance with Article 17(3) of the NASCO Convention and is capable of decisively influencing the content of EU legislation.

The envisaged act does not supplement or amend the institutional framework of the NASCO 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 the envisaged act pursues several aims or has several components and if one of those aims or components is identifiable as the main one, whereas the others are 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 Common Fisheries Policy.

Therefore, the substantive legal basis of the proposed decision is Article 43 TFEU.

4.3. Conclusion

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

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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, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Convention for the Conservation of Salmon in the North Atlantic Ocean⁵ ('the NASCO Convention') was approved by Council Decision 82/886/EEC⁶ and entered into force on 1 October 1983.
- (2) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. The Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or, failing that, on 13 April 2019 unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (3) Until its withdrawal from the Union, the United Kingdom remains a Member State enjoying all the rights and is bound by all obligations stemming from the Treaties, including compliance with the principle of sincere cooperation.
- (4) In the guidelines of 29 April 2017, the European Council recognised the need, in the international context, to take into account the specificities of the United Kingdom as a withdrawing Member State, provided it respects its obligations and remains loyal to the Union's interests while still a Member State.
- (5) The Withdrawal Agreement contains arrangements for the application of provisions of Union law to and in the United Kingdom beyond the date the Treaties cease to apply to the United Kingdom ('transition period'). If that agreement enters into force, Union law, including international agreements to which the Union is a party, will continue to apply to and in the United Kingdom during the transition period in accordance with that agreement and will cease to apply at the end of that period.
- (6) The NASCO Convention currently applies to the United Kingdom as a result of the Union being a Contracting Party to that Convention.

⁵ OJ L 378, 31.12.1982, p. 25.

⁶ Council Decision 82/886/EEC of 13 December 1982 concerning the conclusion of the Convention for the Conservation of Salmon in the North Atlantic Ocean (OJ L 378, 31.12.1982, p. 24).

- (7) Pursuant to Article 17(3) of the NASCO Convention, that Convention is open for accession, subject to the approval of the council of the North Atlantic Salmon Conservation Organisation established by the NASCO Convention, by any State that exercises fisheries jurisdiction in the North Atlantic Ocean or is a State of origin for salmon stocks.
- (8) On 28 February 2019, the United Kingdom submitted an application to accede to the NASCO Convention as a Contracting Party in view of a possible absence of a withdrawal agreement by the date the Treaties cease to apply to it.
- (9) Pursuant to Article 66 of the United Nations Convention on the Law of the Sea (UNCLOS)⁷, States in whose rivers anadromous stocks originate have the primary interest in and responsibility for such stocks. The State of origin of anadromous stocks must ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, such State must cooperate with the State of origin with regard to the conservation and management of such stocks.
- (10) In order to prevent unsustainable fisheries, it is in the interest of the Union that the United Kingdom cooperates in the management of the salmon stocks in full compliance with the provisions of the UNCLOS and the United Nations Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks of 4 August 1995 (UNFSA)⁸ or any other international agreement or norm of international law.
- (11) As provided in Article 66 of the UNCLOS, the State of origin of anadromous stocks and other States fishing these stocks must make arrangements for the implementation of that Article. Such cooperation may be established in the framework of regional fisheries management organisations.
- (12) The accession of the United Kingdom to the NASCO Convention will allow the United Kingdom to cooperate on the necessary conservation and management measures with due regard to the rights, interests and duties of other countries and the Union, and to ensure that fishing activities are carried out in a way that results in the sustainable exploitation of the salmon stocks concerned.
- (13) It is therefore in the interest of the Union to approve the application for accession to the NASCO Convention submitted by the United Kingdom from the moment Union law ceases to apply to the United Kingdom,

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OJ L 179, 23.6.1998, p. 3.

⁸

OJ L 189, 3.7.1998, p. 14.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the council of the North Atlantic Salmon Conservation Organisation established by the Convention for the Conservation of Salmon in the North Atlantic Ocean shall be to approve the application for accession of the United Kingdom to that Convention provided that this approval takes effect from the moment Union law ceases to apply to the United Kingdom.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*