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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (TEU). On 11 April 2019, following a request by the United Kingdom, the European Council (Article 50) agreed¹ to extend further² the period provided for in Article 50(3) TEU until 31 October 2019. Unless the United Kingdom ratifies the Withdrawal Agreement³ by 31 October 2019 or requests a third extension, to which the European Council (Article 50) agrees by unanimity, the period under Article 50(3) TEU will end then. The United Kingdom will then be a third country as of 1 November 2019 without an agreement to ensure an orderly withdrawal. The Commission continues to consider that an orderly withdrawal of the United Kingdom from the Union on the basis of the Withdrawal Agreement is the best outcome.

In the Commission Communication of 12 June 2019 on the ‘State of play of preparations of contingency measures for the withdrawal of the United Kingdom from the European Union’⁴, the Commission concluded that all EU-level preparedness and contingency measures are still fit for purpose. However, it is evident that the extension of the Article 50(3) TEU period until 31 October 2019 impacts certain already adopted contingency measures. This in particular affects contingency measures, such as Regulation (EU) 2019/498, with a fixed date on which they cease to be applicable. In the Communication, the Commission committed to considering whether these acts need technical adjustments to take into account the new timeline of the withdrawal of the United Kingdom from the European Union.

Regulation (EU) 2019/498,⁵ amending Regulation (EU) 2017/2403,⁶ was adopted in March 2019 with a date of application until 31 December 2019. It provides a simplified legal framework to allow the Union to grant authorisations to United Kingdom vessels to enter Union waters and to manage authorisation requests for EU vessels entering United Kingdom waters, should reciprocal access rights to waters be confirmed and in line with the applicable rules on fishing opportunities.

Such a temporary framework remains necessary for 2020 in the absence of a fisheries agreement between the Union and the United Kingdom in its new status of third country, and taking into account that the United Kingdom will not be part of Union decision making beyond the Commission Proposal on fishing opportunities (scheduled for October 2019) unless a new extension of the Article 50(3) period is requested by the United Kingdom and agreed by the European Council (Article 50). It is also recalled that mutual access rights

¹ European Council Decision (EU) 2019/584, OJ L 101, 11.4.2019, p. 1.

² Following a request by the United Kingdom, the European Council decided a first extension on 22 March 2019 (European Council Decision (EU) 2019/476, OJ L 80I, 22.3.2019, p. 1).

³ 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, C 144I, 25.4.2019, p. 1).

⁴ COM(2019)276 final, 12.6.2019.

⁵ Regulation (EU) 2019/498 of the European Parliament and of the Council of 25 March 2019 amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters (OJ L 85 I, 27.3.2019, p.25).

⁶ Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

require that fishing activities are sustainable in accordance with the objectives of the common fisheries policy (CFP). For 2019, and for deep-sea fish stocks also for 2020, the fishing opportunities have been set in 2018 while the United Kingdom was still a member of the European Union⁷. These arrangements and the fishing opportunities set out therein provide the basis for sustainable fishing operations, as established in Regulation (EU) 2019/498 via the amendment to Article 38b of Regulation (EU) 2019/498.

The United Kingdom and the Union are obliged under international⁸ and Union law to ensure through proper conservation and management measures that the marine biological resources are maintained at levels where they are not endangered by over-exploitation.

The Council will establish the Union's fishing opportunities on the basis of the Commission proposal in accordance with Regulation (EU) No 1380/2013 as well as the criteria and parameters set out in applicable management plans in force.

In accordance with Article 33(1) of Regulation (EU) No 1380/2013,⁹ which establishes that where no formal agreement is reached with a third country, the Union should make every effort to reach common arrangements for fishing of such stocks with a view to making the sustainable management possible.

Therefore, there are two possibilities for establishing that the combined fishing activities by the EU and the United Kingdom are sustainable for 2020. First, the Regulation on fishing opportunities for 2020 could reflect possible common arrangements between the United Kingdom and the Union on fishing opportunities for the relevant stocks as an outcome of consultations and provided that the management measures applied by the United Kingdom and the Union guarantee the sustainable management of stocks.

Second, should it prove impossible for the United Kingdom and the Union to conclude such common arrangements (e.g. through an agreed record) in time to be incorporated into the fishing opportunities Regulation for 2020, because of the short timespan between the withdrawal of the United Kingdom from the Union on 1 November 2019 and the December Council of Fisheries Ministers, the Council will set the annual fishing opportunities for 2020 for the Union. Once the UK has set its fishing opportunities for 2020, it will be possible to assess whether the combined fishing opportunities comply with the conditions for sustainable management of the relevant stocks.

⁷ In particular, Council Regulation (EU) 2019/124 of 30 January 2019 fixing for 2019 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 29, 31.1.2019, p. 1) and Council Regulation (EU) 2018/2025 of 17 December 2018 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks (OJ L 325, 20.12.2018, p. 7). See also Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources and modifying Regulation (EC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95, (OJ L 289, 7.11.2003, p. 1).

⁸ Notably the United Nations Convention on the Law of the Sea 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, which set out obligations on cooperation between parties on conservation and management measures designed to maintain or restore marine resources at levels which can produce the maximum sustainable yield.

⁹ 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).

The absence of a common arrangement does not therefore as such prevent the United Kingdom and the Union from granting access to each other's waters. In that case, both would be able to issue fishing authorisations to vessels of the other party provided the conditions for sustainable management of fishing opportunities are met by the United Kingdom and the Union.

For fish stocks regulated under the common fisheries policy, the objective of sustainable management in accordance with maximum sustainable yields is reflected in Article 2(2) of the CFP (Regulation (EU) No 1380/2013, and in the corresponding Regulations on multiannual plans for the North Sea and for the Western Waters (Regulation (EU) 2018/973¹⁰ and Regulation (EU) 2019/472¹¹, respectively).

The assessment of the sustainability condition for issuing fishing authorisations for the UK vessels under Regulation (EU) 2017/2403 as amended will be conducted in accordance with the provisions of title IIIa, in particular Articles 38b and 38c. It will be based either on the fishing opportunities agreed under a common arrangement between the European Union and the United Kingdom, and subsequently reflected in the Council Regulations setting the fishing opportunities for 2020, or, absent such common arrangement, on the fishing opportunities set by the European Union in the Council Fishing Opportunities Regulations and taking into account the fishing opportunities set by the United Kingdom.

For non quota-regulated stocks, assessment of the sustainability will be based on the best available scientific advice for those stocks in the light of binding Union law.

In order to ensure the continued fulfilment of sustainability conditions, the United Kingdom and the Union should exchange, where relevant, the necessary information related to the use and exhaustion of fishing opportunities in their respective waters.

Should the sustainable management of the relevant stocks be established, given the importance of fisheries for the economic livelihood of many coastal communities, it is important for the United Kingdom and the Union to maintain the possibility for arrangements for continued fishing access by the vessels to their respective waters in 2020.

Therefore, the application of all measures concerning fishing operations provided for in the contingency measures as described in Regulation (EU) 2019/498 should be extended to cover the year 2020 and Regulation (EU) 2017/2403 should be amended accordingly.

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

This proposal is a limited amendment of Regulation (EU) 2017/2403, extending the period of application of the contingency measures set out in Regulation (EU) 2019/498 to cover the year 2020. The substantial provisions of the amended Regulation will continue to apply. This proposal is thus fully consistent with the existing legislation.

¹⁰ Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008 (OJ L 179 I, 16.7.2018, p.1).

¹¹ Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for the fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008 (OJ L 83 I, 25.3.2019, p.1).

- **Consistency with other Union policies**

This proposal is part of the Union preparedness and contingency plan to mitigate the most significant disruptions of a withdrawal of the United Kingdom from the Union without a withdrawal agreement.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis is Article 43(2) of the Treaty on the Functioning of the European Union.

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

The common fisheries policy is an area of exclusive EU competence pursuant to Article 3(d) of the Treaty and therefore the subsidiarity principle does not apply.

The proposed act would amend Union Regulation (EU) 2017/2403 for the year 2020, so as to provide a legal basis in Union law for the possibility for United Kingdom vessels to carry out fishing activities in Union waters and for introducing simplified and more efficient authorisation procedures for EU vessels wishing to fish in United Kingdom waters. Action is therefore indispensable at Union level and the result could not be achieved through action at Member State level due to the exclusive competence of the Union.

- **Proportionality**

The proposal complies with the proportionality principle. The proposed Regulation is considered proportionate as it aims to ensure that the status quo in terms of access by Union fishing vessels in United Kingdom waters can be facilitated by laying down reciprocal authorisation conditions. In doing so major disruptions and delays in the authorisation procedures will be avoided. The proposed Regulation also continues the practice of exchanging quotas with the United Kingdom as was the case during the United Kingdom's membership of the Union.

- **Choice of the instrument**

This act is an amendment of a Regulation.

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

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

This is not applicable due to the exceptional, temporary and one-off nature of the event necessitating this proposal which does not relate to the objectives of existing legislation.

- **Stakeholder consultations**

The challenges arising from the withdrawal of the United Kingdom from the Union and possible solutions have been raised by various fisheries stakeholders and Member States representatives. All operators, stakeholders and concerned Member States have emphasised the need to secure sustainable fishing activities.

- **Collection and use of expertise**

N/A

- **Impact assessment**

An impact assessment is not needed, due to the exceptional nature of the situation and limited needs of the period during which the change of status of the United Kingdom is implemented. No materially and legally different policy options are available other than the one proposed.

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

This proposal has no consequence for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications arising from the proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

N/A

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) 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 (TEU). The Treaties cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or failing that, two years after that notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period.
- (2) On 11 April 2019, following a request by the United Kingdom, the European Council agreed¹³ to extend further¹⁴ the period provided for in Article 50(3) TEU until 31 October 2019. Unless the United Kingdom ratifies the Withdrawal Agreement¹⁵ by 31 October 2019 or requests a third extension, to which the European Council agrees by unanimity, the United Kingdom will leave the Union without an agreement and will become a third country as of 1 November 2019.
- (3) 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 and in the United Kingdom. If that agreement enters into force, the common fisheries policy (CFP) will 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.

¹² OJ C , , p. .

¹³ European Council Decision (EU) 2019/584 taken in agreement with the United Kingdom of 11 April 2019 extending the period under Article 50(3) TEU (OJ L 101, 11.4.2019, p. 1).

¹⁴ Following a request by the United Kingdom, the European Council decided a first extension on 22 March 2019 (European Council Decision (EU) 2019/476 taken in agreement with the United Kingdom of 22 March 2019 extending the period under Article 50(3) TEU, OJ L 80, 22.3.2019, p. 1).

¹⁵ 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, CI 144, 25.4.2019, p. 1).

- (4) As provided in the United Nations Convention on the Law of the Sea of 10 December 1982 ('UNCLOS') and in 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'), the parties are obliged to ensure through proper conservation and management measures that the living marine resources are maintained at levels where they are not endangered by over-exploitation.
- (5) Consequently, it is necessary to ensure that the combined catch opportunities available to the Union and the United Kingdom ensure a sustainable management of the relevant stocks.
- (6) Regulation (EU) 2017/2403 of the European Parliament and of the Council¹⁶ sets out the rules for issuing and managing fishing authorisations for vessels in waters under the sovereignty or jurisdiction of a third country and for third country fishing vessels conducting fishing operations in Union waters.
- (7) Regulation (EU) 2019/498 of the European Parliament and of the Council¹⁷ amended Regulation (EU) 2017/1403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operation of United Kingdom vessels in Union waters. This allowed for the possibility to continue fishing access by Union and United Kingdom vessels to each other's waters. Also a flexible system was introduced which would allow the Union to exchange quotas with the United Kingdom after the Treaties cease to apply to the United Kingdom. The period of application of these provisions needs to be extended to enable the issuance of fishing authorisations in each other's waters in absence of a fisheries agreement concluded with the United Kingdom as a third country, provided that the management of the relevant stocks remains sustainable and in accordance with the conditions set out in the common fisheries policy and in the Council Regulations establishing fishing opportunities.
- (8) The fishing opportunities for 2019, and for deep-sea fish stocks for 2019 and 2020, have been set in 2018¹⁸ while the United Kingdom was still a member of the European Union. These arrangements and the fishing opportunities set out therein provide the basis for sustainability of those fishing activities. For all other fishing opportunities for 2020 it is essential to ensure the sustainability of the fishing opportunities.
- (9) Should the Withdrawal Agreement not be ratified by 31 October 2019, and should the United Kingdom withdraw from the Union on 1 November 2019, it may not be feasible for the United Kingdom and the Union to conclude a common arrangement on the fishing opportunities for relevant stocks concerned for 2020 in time for the meeting of the Council of Fisheries Ministers in December 2019 which is scheduled to set the fishing opportunities for the following year. The absence of a common

¹⁶ Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (OJ L 347, 28.12.2017, p. 81).

¹⁷ Regulation (EU) 2019/498 of the European Parliament and of the Council of 25 March 2019 amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters (OJ L 85 I, 27.3.2019, p.25).

¹⁸ Council Regulation (EU) 2019/124 of 30 January 2019 fixing for 2019 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 29, 31.1.2019, p. 1](#)). Council Regulation (EU) 2018/2025 of 17 December 2018 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks ([OJ L 325, 20.12.2018, p. 7](#)).

arrangement however does not as such prevent the United Kingdom and the Union from granting access to each other's waters. In that case, they would be able to issue fishing authorisations to each other's vessels provided they both meet the conditions for sustainable management of the relevant stocks.

- (10) Therefore, in light of the provisions and conditions set out in Regulation (EU) 2017/2403, and as a prerequisite for the issuance of fishing authorisations, the Union will need to assess whether the combined effect of fishing operations established in management measures put in place by the United Kingdom and the Union for 2020 is in line with the sustainable management of the stocks concerned.
- (11) The consistency of the combined fishing opportunities of the Union and the United Kingdom with the sustainable management of the stocks is to be assessed in light of the best available scientific advice for the stocks concerned, the relevant provisions of Regulation (EU) No 1380/2013 as well as the criteria and parameters set out in applicable management plans in force and the relevant Council Regulations setting the fishing opportunities for 2020.
- (12) In case that consistency can be ensured, it is important to maintain the possibility for arrangements for continued reciprocal fishing access by Union and United Kingdom vessels to each other's waters in 2020, given the importance of fisheries for the economic livelihood of many coastal communities.
- (13) Therefore, the application of all measures concerning fishing operations provided for in the contingency measures as adopted under Regulation (EU) 2019/498¹⁹ should be extended to cover the year 2020 and Regulation (EU) 2017/2403 should be amended accordingly.
- (14) The territorial scope of this Regulation and any reference to the United Kingdom therein does not include Gibraltar.
- (15) This Regulation should enter into force as a matter of urgency and should apply from the day following that on which the Treaties cease to apply to the United Kingdom, unless a withdrawal agreement concluded with the United Kingdom has entered into force by that date. It should apply until 31 December 2020.
- (16) In order to enable both Union and United Kingdom operators to continue to fish in accordance with their relevant fishing opportunities, fishing authorisations for activities in Union waters should only be granted to United Kingdom vessels if and in so far as the Commission satisfies itself that the United Kingdom extends access rights of Union vessels to conduct fishing operations in United Kingdom waters on the basis of reciprocity,

¹⁹ Regulation (EU) 2019/498 of the European Parliament and of the Council of 25 March 2019 amending Regulation (EU) 2017/2403 as regards fishing authorisations for Union fishing vessels in United Kingdom waters and fishing operations of United Kingdom fishing vessels in Union waters (OJ L 85 I, 27.3.2019, p. 25).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2017/2403 is amended as follows:

- (1) In Article 18a "31 December 2019" is replaced by "31 December 2020";
- (2) In Article 38a "31 December 2019" is replaced by "31 December 2020";
- (3) Article 38b is replaced by the following:

"Article 38b

Fishing operations by United Kingdom fishing vessels

United Kingdom fishing vessels may carry out fishing operations in Union waters in accordance with the conditions set out in the Council Regulations establishing fishing opportunities for 2019 and 2020, provided that the fishing opportunities set by both the Union and the United Kingdom combined are in line with the sustainable management of the relevant stocks in accordance with Regulation (EU) No 1380/2013.";

- (4) In Article 38c(2), point (f) is replaced by the following:
 - "(f) Where applicable, fishing opportunities are available to the United Kingdom pursuant to Article 38b."

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date following that on which the Treaties cease to apply to the United Kingdom pursuant to Article 50(3) TEU, until 31 December 2020.

However, this Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) TEU has entered into force by the date following that on which the Treaties cease to apply to the United Kingdom.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President