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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 430 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the North-East Atlantic Fisheries Commission and repealing Decision (EU) 2019/865

Delegations will find attached document COM(2023) 430 final.

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2023/0283 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the North-East Atlantic
Fisheries Commission and repealing Decision (EU) 2019/865**

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the EU's behalf at meetings of the North-East Atlantic Fisheries Commission (NEAFC) for the period 2024-2028 in connection with the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries

The Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries (NEAFC Convention) aims, by establishing the NEAFC, to ensure the long-term conservation and optimum utilisation of the fishery resources in the Convention area ('the regulatory area'). The Convention entered into force on 17 March 1982 and was amended in 2004 and 2006. The 2006 amendment formally entered into force on 29 October 2013. The 2004 amendment has not yet entered into force.

The EU is a party to the NEAFC Convention, having approved it under Council Decision 81/608/EEC¹. The 2004 and 2006 amendments were approved by Council Decision 2009/550/EC².

2.2. North-East Atlantic Fisheries Commission

The NEAFC is the body established by the NEAFC Convention to be responsible for the management and conservation of fishery resources in the regulatory area. It adopts conservation and management measures to achieve optimum utilisation of the fishery resources for which it is responsible.

As a member of the NEAFC, the EU is entitled to participate in, and vote on, its decisions. The NEAFC takes its decisions on conservation and control measures by a two thirds majority of the votes of all Contracting Parties who are present and who cast affirmative or negative votes.

2.3. NEAFC decisions

The NEAFC has the authority to adopt conservation and management measures for the fisheries for which it is responsible and these are binding on the contracting parties.

In accordance with Article 12 (1) and (2) of the NEAFC Convention, the measures enter into force 80 days after the date on which the contracting parties are notified of them by the NEAFC. Contracting parties that object to a measure within 50 days of being notified are not bound by that measure. Where more than a third of the contracting parties submit an objection, the remaining contracting parties are not obliged to implement the contested measure.

¹ Council Decision 81/608/EEC of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries (OJ L 227, 12.8.1981, p. 21).

² Council Decision 2009/550/EC of 5 March 2009 on the approval of amendments to the Convention on future multilateral cooperation in the North-East Atlantic Fisheries allowing for the establishment of dispute settlement procedures, the extension of the scope of the Convention and a review of the objectives of the Convention (OJ L 184, 16.7.2009, p. 12).

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

The position to be adopted on behalf of the EU at the annual meetings of regional fisheries management organisations (RFMOs) is currently established according to a two-tier approach. A Council Decision sets out the guiding principles of the EU's position on a multiannual basis and it is subsequently adjusted for each annual meeting by Commission services non-papers to be endorsed by the Council.

For the NEAFC, this approach is implemented by Council Decision (EU) 2019/865 of 14 May 2019, which sets out the EU's position in the NEAFC for the period 2019-23. The Decision contains general principles, but also takes into account, as far as possible, the specific features of the NEAFC. In addition, it sets out the standard process for establishing the EU's position year by year, as requested by Member States.

Council Decision (EU) 2019/865 incorporated the principles of the new common fisheries policy, as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council³, also taking into account the objectives set out in the Commission Communication on the external dimension of the common fisheries policy⁴. Moreover, it adjusted the EU's position to the Treaty of Lisbon.

Council Decision (EU) 2019/865 provides for an assessment, and where appropriate, a revision of the EU's position before the 2024 annual meeting. Therefore, this proposal sets out the EU's position in the NEAFC for the period 2024-2028, thereby replacing Council Decision (EU) 2019/865.

This proposal takes into account, in relation to fishing, the European Green Deal, notably Biodiversity⁵, Climate Adaptation⁶ and Farm to Fork Strategies⁷. It also takes into account the Plastics Strategy⁸ and the Zero pollution Action Plan⁹. Furthermore, it also takes into consideration, the International Ocean Governance Joint Communication¹⁰.

³ Regulation (EU) No 1380/2013 of the European Parliament and of the Council 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 of 28/12/2013, p. 22).

⁴ COM(2011) 424, 13.7.2011.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380).

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe — the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381)

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Strategy for Plastics in a Circular Economy COM(2018) 28 final.

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: Towards Zero Pollution for Air, Water and Soil COM/2021/400 final

¹⁰ Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Setting the course for a sustainable blue planet JOIN/2022/28 final.

4. LEGAL BASIS

4.1. Procedural legal basis

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 EU’s behalf in a body set up by an agreement, when that body is called on to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement’.

‘Acts having legal effects’ include acts that have legal effects by virtue of the rules of international law governing the body in question, and instruments that do not have a binding effect under international law, but are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’¹¹.

Application to this case

The NEAFC is a body set up by an agreement, namely the NEAFC Convention.

The acts that the NEAFC is called upon to adopt constitute acts having legal effects. They are to be binding under international law in accordance with Article 12 of the NEAFC Convention and are capable of decisively influencing the content of EU legislation, including:

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing¹²;
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy¹³; and
- Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets¹⁴.

The envisaged acts do not supplement or amend the institutional framework of the NEAFC Convention.

Therefore, the procedural legal basis for the proposed Decision is Article 218(9) TFEU.

4.2. Substantive legal basis

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 EU’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.

Application to this case

The main objective and content of the envisaged act relate to fisheries. The legal basis setting out the principles to be reflected in this position is Regulation (EU) No 1380/2013.

¹¹ 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.

¹² OJ L 286, 29.10.2008, p. 1.

¹³ OJ L 343, 22.12.2009, p. 1.

¹⁴ OJ L 347, 28.12.2017, p. 81.

Therefore, the substantive legal basis of the proposed Decision is Article 43(2) TFEU. The Decision will replace Council Decision (EU) 2019/865, which covers the period 2019-2023.

4.3. Conclusion

The legal basis of the proposed Decision should be Article 43(2) TFEU, in conjunction with Article 218(9) TFEU.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the North-East Atlantic Fisheries Commission and repealing Decision (EU) 2019/865

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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Decision 81/608/EEC¹, the Union concluded the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries² (NEAFC Convention), which established the North East Atlantic Fisheries Commission (NEAFC). The 2004 and 2006 amendments to the NEAFC Convention were approved by Council Decision 2009/550/EC of 5 March 2009³. The amendments formally entered into force on 29 October 2013 although, in accordance with the London Declaration of 18 November 2005⁴, it was agreed to implement the amendments on a provisional basis from their adoption, pending their entry into force.
- (2) The NEAFC adopts measures to ensure the long-term conservation and optimum utilisation of the fishery resources in the NEAFC Convention area ('the Regulatory Area'). Such measures may become binding upon the Union.
- (3) Regulation (EU) No 1380/2013 of the European Parliament and of the Council⁵ 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 the 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

¹ Council Decision of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries (OJ L 227, 12.8.1981, p. 21).

² OJ L 227, 12.8.1981, p. 22

³ OJ L 184, 16.7.2009, p. 12.

⁴ London Declaration: Declaration on the Interpretation and Implementation of the Convention on the Future Multilateral Cooperation in North-East Atlantic Fisheries, North-East Atlantic Fisheries Commission, 2005

⁵ 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).

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. Besides, 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.

- (4) In line with the Biodiversity⁶, Climate Adaptation⁷ and Farm to Fork Strategies⁸, it is essential to protect nature and reverse the degradation of ecosystems. The risks stemming from climate change and loss of biodiversity must not jeopardise the availability of the goods and services that healthy marine ecosystems provide to fishers, coastal communities and humanity at large.
- (5) The Plastics Strategy⁹ refers to specific measures to reduce plastics and marine pollution as well as the loss or abandonment at sea of fishing gear. Furthermore, the Zero pollution Action Plan¹⁰ aims at reducing by 50% plastic litter at sea and by 30% micro-plastics released into the environment.
- (6) Under the International Ocean Governance Joint Communication¹¹, marine biodiversity protection and conservation are key priorities under the EU's external action. The EU is the most prominent actor in Regional Fisheries Management Organisations (RFMOs) and fisheries bodies worldwide. There, the EU promotes the sustainability of fish stocks, promotes transparent decision-making based on sound scientific advice, enhances scientific research, and strengthens compliance.
- (7) It is appropriate to establish the position to be taken on the Union's behalf in the meetings of the NEAFC for the period 2024-2028, as the NEAFC conservation and enforcement measures will be binding on the Union and capable of decisively influencing the content of Union law, namely, Regulation (EU) 2017/2403 of the European Parliament and of the Council¹² and Council Regulations (EC) No 1005/2008¹³ and No 1224/2009¹⁴.

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380).

⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe — the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381).

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Strategy for Plastics in a Circular Economy COM(2018) 28 final.

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: Towards Zero Pollution for Air, Water and Soil COM/2021/400 final.

¹¹ Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Setting the course for a sustainable blue planet JOIN/2022/28 final.

¹² 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).

¹³ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).

- (8) Currently the position to be taken on the Union's behalf in the meetings of the NEAFC is established by Council Decision (EU) 2019/865¹⁵. It is appropriate to repeal that Decision and establish a new Decision for the period 2024-2028.
- (9) In view of the evolving nature of fishery resources in the Regulatory Area (international waters under the competence of NEAFC) and the consequent need for the Union's position to take account of new developments, including new scientific and other relevant information presented before or during the meetings of the NEAFC, procedures should be established for the year-to-year specification of the Union's position for the period 2024-2028. Those positions should be in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the North-East Atlantic Fisheries Commission (NEAFC) is set out in Annex I of this Decision.

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the NEAFC shall be conducted in accordance with Annex II.

Article 3

The Union's position set out in Annex I shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, at the latest for the annual meeting of the NEAFC in 2029.

Article 4

Decision (EU) 2019/865 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

¹⁴ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the Common Fisheries Policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

¹⁵ Council Decision (EU) 2019/865 of 14 May 2019 on the position to be taken on behalf of the European Union in the North East Atlantic Fisheries Commission (NEAFC), and repealing the Decision of 26 May 2014 on the position to be adopted, on behalf of the Union, in the NEAFC (OJ L 140, 28.5.2019, p. 60).