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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	8 April 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2022) 165 final
Subject:	Proposal for a COUNCIL REGULATION amending Regulation (EU) 2022/109 fixing for 2022 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

Delegations will find attached document COM(2022) 165 final.

Encl.: COM(2022) 165 final



Brussels, 8.4.2022
COM(2022) 165 final

2022/0108 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2022/109 fixing for 2022 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

Given that, in March 2022, discussions between the Union and Norway on equal and non-discriminatory access to Spitzbergen (Svalbard) waters for Union fleets fishing for cod (*Gadus morhua*) were ongoing, the Council extended the period of application of the provisional Union quota of 4 500 tonnes for cod in Svalbard waters and international waters of ICES subarea 1 and division 2b from 31 March until 30 April 2022 (Regulation (EU) 2022/[...]¹). Norway also extended the period of application of the provisional Union quota for cod in Svalbard waters until 30 April 2022.

Discussions between the Union and Norway on equal and non-discriminatory access to Svalbard waters for Union fleets fishing for cod are still ongoing. Pending the outcome of those discussions, the Commission proposes that the Council fix the Union quota for cod in Svalbard waters and international waters of ICES subarea 1 and division 2b, before the expiry of the extended period of application of the provisional Union quota on 30 April 2022. The fishing opportunities for cod in Svalbard waters and international waters of ICES subarea 1 and division 2b are marked *pm* (*pro memoria*) pending the outcome of those discussions. As soon as the outcome of those discussions is known, a Commission services non-paper setting out the relevant fishing opportunities will be submitted to the Council.

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

The measures proposed are consistent with the objectives and rules of the CFP and are consistent with the Union's policy on sustainable development.

- **Consistency with other Union policies**

The measures proposed are consistent with other Union policies, in particular with the policies in the field of the environment.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of this proposal is Article 43(3) of the Treaty on the Functioning of the European Union.

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

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

- **Proportionality**

The proposal allocates fishing opportunities to Member States in accordance with the objectives of Regulation (EU) No 1380/2013². Pursuant to Articles 16 and 17 of Regulation (EU) No 1380/2013, Member States are to decide how the fishing opportunities allocated to

¹ Council Regulation (EU) 2022/[...]

² 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. 22–61).

them may be allocated to vessels flying their flag in accordance with certain criteria for the allocation of fishing opportunities. Therefore, Member States have the necessary margin of discretion to exercise while distributing the allocated total allowable catch (TAC) covered by the proposal relating to the social/economic model of their choice.

The proposal has no new financial implications for Member States. The Council sets fishing opportunities every year and the public and private means to implement it are already in place.

- **Choice of the instrument**

Proposed instrument: Regulation.

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

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

Not applicable.

- **Stakeholder consultations**

During the discussions with Norway on equal and non-discriminatory access to Svalbard waters for Union fleets fishing for cod, the Commission has informed and consulted with stakeholders, in particular with fishing industry representatives and with the Long Distance Fleet Advisory Council. The Commission has also maintained regular contact with Member States' administrations through technical meetings and through meetings of the Council working party on fisheries policy.

- **Collection and use of expertise**

The proposal will be based on the available scientific advice of the International Council for the Exploration of the Sea (ICES) and discussions with the parties concerned.

- **Impact assessment**

Any elements that are relevant to assessing possible impacts of the fishing opportunities covered by the proposal have been dealt with in the preparation and conduct of the discussions with Norway.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposed measures will have no budgetary implications.

5. OTHER ELEMENTS

The Treaty of 9 February 1920 relating to Spitsbergen (Svalbard) ('the 1920 Treaty of Paris') grants equal and non-discriminatory access to resources around Svalbard for all parties to that treaty, including with respect to fishing.

In December 2020, Norway established a Union quota for cod in Svalbard waters for 2021 in Norwegian legislation that was significantly lower (6 760 tonnes lower) than the Union quota established in December 2020 by the Council for cod in Svalbard waters and international waters of ICES subarea 1 and division 2b for 2021 (Regulation (EU) 2021/92³).

The Commission has engaged, and continues to engage, with Norway throughout 2021 and 2022, on this issue.

³ Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 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 31, 29.1.2021, p. 31–192).

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2022/109 fixing for 2022 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Regulation (EU) 2022/109¹ fixed for 2022 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.
- (2) Council Regulation (EU) 2022/109 established for the first quarter of 2022 a provisional Union quota of 4 500 tonnes for Union fleets fishing for cod (*Gadus morhua*) in Spitzbergen (Svalbard) waters and international waters of ICES subarea 1 and division 2b. Council Regulation (EU) 2022/[...]² extended the period of application of that Union quota of 4 500 tonnes to 30 April 2022.
- (3) A Union quota for cod in Svalbard waters and international waters of ICES subarea 1 and division 2b should be set before the extended period of application of the provisional Union quota expires on 30 April 2022. That Union quota should be set in line with the outcome of discussions between the Union and Norway on equal and non-discriminatory access to Svalbard waters for Union fleets fishing for cod.
- (4) Any quotas should be allocated to the Member States in accordance with Council Decision 87/277/EEC³, Poland's share of the Union quota and subject to the adaptations necessary due to the withdrawal of the United Kingdom from the Union.
- (5) Regulation (EU) 2022/109 should therefore be amended accordingly.
- (6) The catch limits provided for in Regulation (EU) 2022/109 apply from 1 January 2022. The provisions introduced by this Regulation concerning catch limits should therefore also apply from that date. Such retroactive application does not affect the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned are increased. For reasons of urgency, this Regulation should

¹ Council Regulation (EU) 2022/109 of 27 January 2022 fixing for 2022 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 21, 31.1.2022, p. 1–164).

² Council Regulation (EU) 2022/[...]

³ Council Decision 87/277/EEC of 18 May 1987 on the allocation of the catch possibilities for cod in the Spitsbergen and Bear Island area and in Division 3M as defined in the NAFO Convention (OJ L 135, 23.5.1987, p. 29).

enter into force on the day following that of its publication in the Official Journal of the European Union,

HAS ADOPTED THIS REGULATION:

Article 1
Amendment of Regulation (EU) 2022/109

Regulation (EU) 2022/109 is amended as follows:

In Annex IB, the fourth table is replaced by the following:

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Species:	Cod <i>Gadus morhua</i>	Zone:	1 and 2b (COD/1/2B.)
Germany	<i>pm</i> (1)(2)	Analytical TAC	
Spain	<i>pm</i> (1)(2)	Article 3 of Regulation (EC) No 847/96 shall not apply	
France	<i>pm</i> (1)(2)	Article 4 of Regulation (EC) No 847/96 shall not apply	
Poland	<i>pm</i> (1)(2)		
Portugal	<i>pm</i> (1)(2)		
Other Member States	<i>pm</i> (1)(2)(3)		
Union	<i>pm</i> (1)(2)		
TAC	Not relevant		
(1)	The allocation of the share of the cod stock available to the Union in the zone Spitzbergen and Bear Island and the associated by-catches of haddock are entirely without prejudice to the rights and obligations deriving from the 1920 Treaty of Paris.		
(2)	By-catches of haddock may represent up to 14 % per haul. The by-catch quantities of haddock are in addition to the quota for cod.		
(3)	Except Germany, Spain, France, Poland and Portugal. Catches to be counted against this shared quota shall be reported separately (COD/1/2B_AMS).		

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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 1 January 2022.

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

Done at Brussels,

For the Council
The President