



EUROPEAN
COMMISSION

Brussels, 11.7.2023
COM(2023) 404 final

2023/0281 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at meetings of the Parties to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean and repealing Decision (EU) 2020/1582

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the Decision establishing the position to be taken on the EU's behalf at meetings of the Parties to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean for the period 2024-2028, in connection with the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean

The Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean ('the Agreement') aims to prevent unregulated fishing in the high seas portion of the Central Arctic Ocean by applying precautionary conservation and management measures as part of a long-term strategy to safeguard healthy marine ecosystems and to ensure the conservation and sustainable use of fish stocks. The Agreement entered into force on 25 June 2021.

The EU is a party to the Agreement¹.

2.2. The meeting of the Parties

The meeting of the Parties is the decision-making body under the Agreement, which shall meet every two years, or more frequently if it so decides. Decisions on questions of procedure are taken by majority and decisions on questions of substance are taken by consensus. The EU is entitled to participate in, and vote on, its decisions.

2.3. Decisions by the meeting of the Parties

The meeting of the Parties has the authority to adopt conservation and management measures, which are binding on the contracting parties. Measure may be objected by a Party.

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

It is proposed to establish the position to be adopted on behalf of the EU at the meetings of the Parties according to a two-tier approach. A Council Decision will set out the guiding principles of the EU's position on a multiannual basis. The EU's position will be subsequently adjusted for each meeting by Commission services non-papers to be endorsed by the Council.

This approach has been implemented by Council Decision (EU) 2020/1582 of 23 October 2020, which sets out the EU's position in the meeting of the Parties to the Agreement for the period 2020-2024. The Decision contains general principles, but also takes into account, as far as possible, the specificities of the Agreement. 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) 2020/1582 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

¹ Council Decision (EU) 2019/407 of 4 March 2019 on the conclusion, on behalf of the European Union, of the Agreement to prevent unregulated high seas fisheries in the Central Arctic Ocean (OJ L 73, 15.3.2019, p. 1.

Council², also taking into account the objectives set out in the Commission Communication on the external dimension of the common fisheries policy³.

Council Decision (EU) 2020/1582 does not provide for a review of the EU's position before the meeting of the Parties to the Agreement in 2025. However, most of the Council Decisions setting out the EU's position in the various regional fisheries management organisations (RFMOs) to which it is a contracting party are due for review before the 2024 annual meetings of those RFMOs. Therefore, to promote consistency between the EU's positions in all RFMOs and to synchronise the timing for the revision procedures, it is appropriate to bring forward the revision of the EU's position in the Agreement for the period 2024-2028 and replace Council Decision (EU) 2020/1582.

This approach is currently also taken in the RFMOs and for the position that is to be taken on behalf of the EU in those meetings.

The current revision takes into consideration, in relation to fishing, the European Green Deal, notably Biodiversity⁴, Climate Adaptation⁵ and Farm to Fork Strategies⁶. It also takes into account the Plastics Strategy⁷ and the Zero pollution Action Plan⁸. Furthermore, it also takes into consideration, the International Ocean Governance Joint Communication⁹, as well as a Joint Communication on 'a stronger EU engagement for a peaceful, sustainable and prosperous Arctic'¹⁰, and a Joint Communication on 'an integrated European Union policy for the Arctic'¹¹.

² 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).

³ COM(2011) 424, 13.7.2011.

⁴ 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).

⁵ 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).

⁶ 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)

⁷ 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.

⁸ 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

⁹ 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.

¹⁰ Communication by the High Representative of the European Union for Foreign Affairs and Security Policy and the European Commission, a stronger EU engagement for a peaceful, sustainable and prosperous Arctic JOIN/2021/27 final

¹¹ Communication by the High Representative of the European Union for Foreign Affairs and Security Policy and the European Commission, an integrated European Union policy for the Arctic, JOIN/2016/021 final 27.4.2016

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 EU’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’.

‘Acts having legal effects’ include acts that have legal effects by virtue of the rules of international law governing the body in question. 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’¹².

4.1.2. Application to the present case

The meeting of the Parties is a body set up by an agreement, namely the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean.

The acts which the meeting of the Parties is called upon to adopt constitute acts having legal effects. The envisaged acts of the meeting of the Parties will be binding under international law and are capable of decisively influencing the content of EU legislation, namely:

- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing¹³;
- Council Regulation (EC) No 1224/2009 establishing a EU control system for ensuring compliance with the rules of the common fisheries policy¹⁴; and
- Council Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets¹⁵.

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

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 EU's behalf. If the envisaged 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.

4.2.2. Application to the present case

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

¹² Judgment of the Court of Justice of the European Union of 7 October 2014, *Germany v Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

¹³ OJ L 286, 29.10.2008, p. 1.

¹⁴ OJ L 343, 22.12.2009, p. 1.

¹⁵ OJ L 347, 28.12.2017, p. 81.

Therefore, the substantive legal basis of the proposed Decision is Article 43(2) TFEU. The Decision is to replace Council Decision (EU) 2020/1582, which covers the period 2020-2024.

4.3. Conclusion

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean ('the Agreement') was concluded by the Union by Council Decision (EU) 2019/407¹. The Agreement entered into force on 25 June 2021.
- (2) The meeting of the Parties is responsible for the adoption of measures designed to ensure the Agreement's implementation in order to achieve the objective of preventing unregulated fishing in the high seas portion of the Central Arctic Ocean through the application of precautionary conservation and management measures as part of a long-term strategy to safeguard healthy marine ecosystems and to ensure the conservation and sustainable use of fish stocks. Such measures may become binding upon the Union.
- (3) Regulation (EU) No 1380/2013 of the European Parliament and of the Council² 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 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 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

¹ Council Decision (EU) 2019/407 of 4 March 2019 on the conclusion, on behalf of the European Union, of the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (OJ L 73, 15.3.2019, p. 1).

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).

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 Biodiversity³, Climate Adaptation⁴ and Farm to Fork Strategies⁵, 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 Strategy⁶ 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 Plan⁷ 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 Communication⁸, 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) As stated by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission in a joint Communication on Setting the course for a sustainable blue planet⁹, by the Council conclusions on International Ocean Governance which covers the aforementioned Joint Communication¹⁰, and the Joint Communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on a stronger EU engagement for a peaceful, sustainable and prosperous Arctic¹¹, the Union is committed to the Agreement's full implementation as it protects marine ecosystems by applying a precautionary and science-based approach to any future fisheries in the Central Arctic Ocean.

³ 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).

⁴ 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).

⁵ 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).

⁶ 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.

⁷ 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.

⁸ 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.

⁹ Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on Setting the course for a sustainable blue planet, JOIN (2022) 28 final, 24.06.2022.

¹⁰ Council conclusions on International Ocean Governance, 15973/22, 13.12.2022.

¹¹ Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on a stronger EU engagement for a peaceful, sustainable and prosperous Arctic, JOIN/2021/27 final, 13.10.2021.

- (8) It is appropriate to establish the position to be taken on the Union's behalf in the meeting of the Parties to the Agreement for the period 2024-2028, as conservation and management measures under the Agreement may be binding on the Union and capable of decisively influencing the content of Union law, namely, Council Regulations (EC) No 1005/2008¹² and (EC) No 1224/2009¹³, and Regulation (EU) 2017/2403 of the European Parliament and of the Council¹⁴.
- (9) Currently, the position to be taken on the Union's behalf in the meetings of the Agreement is established by Council Decision (EU) 2020/1582¹⁵. It is appropriate to repeal that Decision and establish a new Decision for the period 2024-2028.
- (10) In view of the limited knowledge on and nature of fishery resources in the geographical area covered by the Agreement, 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 Parties, procedures should be established for the year-to-year specification of the Union's position for the period 2024-2028, in line with the principle of sincere cooperation between the Union institutions enshrined in Article 13(2) of the Treaty on European Union.
- (11) This Decision on the position to be taken on behalf of the Union in the meetings of the Parties to the Agreement may be followed at a later stage by a further separate Council Decision on the opening of negotiations to establish one or more additional regional or subregional fisheries management organisations or arrangements in the Arctic high seas.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the Parties to the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (Agreement) 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 Parties to the Agreement shall be conducted in accordance with Annex II.

¹² 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).

¹³ 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).

¹⁴ 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).

¹⁵ Council Decision (EU) 2020/1582 of 23 October 2020 on the position to be taken on behalf of the European Union at the meetings of the Parties to the Agreement to prevent unregulated high seas fisheries in the Central Arctic Ocean (OJ L 362, 30.10.2020, p. 20).

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 meeting of the Parties to the Agreement in 2029.

Article 4

Decision (EU) 2020/1582 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President