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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the annual Conference of the Parties to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea and repealing Decision (EU) 2019/866

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the behalf of the European Union at meetings of the annual Conference of the Parties to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea 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 the Conservation and Management of Pollock Resources in the Central Bering Sea

The Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (Bering Sea Convention) aims, by establishing the annual Conference of the Parties to the Convention, to ensure the long-term conservation and sustainable use of pollock resources in the Convention area. The Convention entered into force on 8 December 1995.

The Republic of Poland is a contracting party to the Bering Sea Convention. The EU is not a party to the Convention. In accordance with Article 6(9) of the Accession Act¹, fisheries agreements that Member States have concluded with non-EU countries are to be managed by the EU and the EU is to implement any decisions established under them.

Council Decision 7277/16 of 11 April 2016 authorised Poland to negotiate, in the interest of the EU, an amendment to the Bering Sea Convention with a view to the EU becoming a contracting party. In October 2016, Poland proposed to the Bering Sea Convention Depositary such an amendment. The respective negotiation is still not completed. Council Decision (EU) 2023/575 of 9 March 2023 authorised Poland to ratify, in the interest of the European Union, the amendment to the Bering Sea Convention that would allow the participation of the EU as a party to that Convention. It is understood that, once the EU is accepted as a full contracting party, Poland will withdraw its membership.

2.2. The annual Conference of the Parties

The annual Conference of the Parties is the body established by the Bering Sea Convention to be responsible for the management and conservation of pollock resources in the Convention area. It adopts conservation and management measures to ensure the long-term conservation and sustainable use of fishery resources under its purview.

As a member of the annual Conference of the Parties, Poland has participation and voting rights. As the EU is not a party to the Convention, and the Bering Sea Convention's scope falls under exclusive competent of the EU, Poland is represented by the Commission at the annual Conference of the Parties. The annual Conference of the Parties usually takes its decisions by consensus.

2.3. Decisions of the annual Conference of the Parties

The annual Conference of the Parties has the authority to adopt measures for the fisheries under its purview and these are binding on the contracting parties.

¹ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33).

The measures agreed by the contracting parties enter into force immediately after the contracting parties have been notified of them.

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 and orientations 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 annual Conference of the Parties, this approach is implemented by the Council Decision (EU) 2019/866 of 14 May 2019, which sets out the EU's position in the Bering Sea Convention for the period 2019-2023. The Decision contains general principles and orientations, but also takes into account to the extent possible the specificities of the Bering Sea Convention. 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) 2019/866 provides for a review of the EU's position before the 2024 annual meeting. Therefore, this proposal sets out the EU's position in the Bering Sea Convention for the period 2024-2028, thereby replacing the Council Decision (EU) 2019/866.

Council Decision (EU) 2019/866 incorporated the principles and orientations of the new common fisheries policy, as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council², also taking into account the objectives set out in the Commission Communication on the external dimension of the common fisheries policy³. Moreover, it adjusted the EU's position to the Treaty of Lisbon

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.

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, 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.

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, 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’¹⁰.

4.1.2. Application to the present case

The annual Conference of the Parties is a body set up by an agreement, namely the Bering Sea Convention.

The acts that the annual Conference of the Parties is called upon to adopt constitute acts having legal effects. The envisaged acts are to be binding under international law in accordance with the Bering Sea 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 fishing¹¹;
- Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy¹²; and
- Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets¹³.

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

4.2.2. Application to the present case

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

¹⁰ 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.

¹¹ OJ L 286, 29.10.2008, p. 1.

¹² OJ L 343, 22.12.2009, p. 1.

¹³ 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) 2019/866.

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 Republic of Poland is a Contracting Party to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea ('Bering Sea Convention'). The Union is not a Party to that Convention. In accordance with Article 6(9) of the Accession act¹, fisheries agreements concluded by Member States with third countries are managed by the Union and the Union should implement any decisions established under the Bering Sea Convention.
- (2) Council Decision 7277/16 of 11 April 2016 authorised the Republic of Poland to negotiate, in the interest of the Union, an amendment to the Bering Sea Convention with a view for the Union to becoming a Party to that Convention. In October 2016, Poland proposed such an amendment to the Bering Sea Convention to the Depositary of that Convention.
- (3) Council Decision (EU) 2023/575 of 9 March 2023 authorised Poland to ratify, in the interest of the European Union, the amendment to the Bering Sea Convention that would allow the participation of the Union as party to that Convention². It is understood that upon the acceptance of the Union as a full Party to the Bering Sea Convention, the Republic of Poland will withdraw its membership from the Convention.
- (4) The annual Conference of the Parties to the Bering Sea Convention ('the annual Conference of the Parties') is responsible for the management and conservation of the Pollock Resources in the Bering Sea Convention Area. Such measures may become binding upon the Union.

¹ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33.).

² Council Decision (EU) 2023/575 of 9 March 2023 authorising Poland to ratify, in the interest of the European Union, the amendment to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (OJ L 75, 14.3.2023, p.15).

- (5) Regulation (EU) No 1380/2013 of the European Parliament and of the Council³ 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 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.
- (6) In line with the Biodiversity⁴, Climate Adaptation⁵ and Farm to Fork Strategies⁶, 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.
- (7) The Plastics Strategy⁷ 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 Plan⁸ aims at reducing by 50% plastic litter at sea and by 30% micro-plastics released into the environment.
- (8) Under the International Ocean Governance Joint Communication⁹, 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

³ 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).

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.

of fish stocks, promotes transparent decision-making based on sound scientific advice, enhances scientific research, and strengthens compliance.

- (9) It is appropriate to establish the position to be taken on the Union's behalf in the meetings of the annual Conference of the Parties to the Bering Sea Convention for the period 2024-2028, as the Bering Sea Convention conservation and enforcement measures will be binding on the Union and capable of decisively influencing the content of Union law, namely, Council Regulation (EC) No 1005/2008¹⁰; Council Regulation (EC) No 1224/2009¹¹; and Regulation (EU) 2017/2403 of the European Parliament and of the Council¹².
- (10) Under current practice, the Commission, as the external representative of the Union with regard to the exclusive Union competence in fisheries, represents the Republic of Poland and the Union at the annual Conference of the Parties of the Bering Sea Convention.
- (11) Currently, the position to be taken on the Union's behalf in the meetings of the annual Conference of the Parties to the Bering Sea Convention is established by Council Decision (EU) 2019/866¹³. It is appropriate to repeal that Decision and establish a new Decision for the period 2024-2028.
- (12) In view of the evolving nature of fishery resources in the Bering Sea Convention Area 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 annual Conference of the Parties, 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 annual Conference of the Parties to the Bering Sea Convention is set out in Annex I of this Decision.

¹⁰ 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).

¹¹ 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).

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 Decision (EU) 2019/866 of 14 May 2019 on the position to be taken on behalf of the European Union in the annual Conference of the Parties to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, and repealing the Decision of 12 June 2017 establishing the position to be adopted, on behalf of the Union, in that annual Conference (OJ L 140, 28.5.2019, p. 66).

Article 2

The year-to-year specification of the Union's position to be taken in the meetings of the annual Conference of the Parties to the Bering Sea Convention 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 Conference of the Parties to the Bering Sea Convention in 2029.

Article 4

Decision (EU) 2019/866 is repealed.

Article 5

1. Without prejudice to the prerogatives of the Commission on external representation of the Union, this Decision is addressed to the Republic of Poland until the accession of the Union to the Bering Sea Convention..
2. After the accession of the Union to the Bering Sea Convention, this Decision is addressed to the Commission which shall represent the Union at the meetings of the annual Conference of the Parties to the Bering Sea Convention.

Done at Brussels,

For the Council
The President