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Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Western Central
Atlantic Fishery Commission and repealing Decision (EU) 2019/1563**

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 parties of the Western Central Atlantic Fishery Commission (WECAFC) in 2024-2028 on the adoption of non-binding resolutions and recommendations regarding the conservation and management of living marine resources.

2. CONTEXT OF THE PROPOSAL

2.1. The FAO Resolution establishing the Western Central Atlantic Fishery Commission

The WECAFC was established in 1973 by Resolution 4/61 of the Council of the Food and Agriculture Organization (FAO) of the United Nations, under Article VI (1) of the FAO Constitution. The WECAFC aims to promote the effective conservation, management and development of the living marine resources for which it is responsible in accordance with the FAO Code of Conduct for Responsible Fisheries and address common problems of fisheries management and development faced by its members.

The EU is a member of the WECAFC¹, as are Spain, France and Netherlands.

2.2. The Western Central Atlantic Fishery Commission

The WECAFC is a consultative technical and regional fisheries body (RFB) established under Article VI (1) of the FAO Constitution. The WECAFC's Secretariat is managed and financed by the FAO. Its main functions include promoting, coordinating and facilitating governance and activities related to the conservation and management of living marine resources for which it is responsible. The WECAFC can also provide advice to its members and relevant fisheries organisations on fisheries management, monitoring, control and surveillance. It can also assist its members, where appropriate, in the implementation of relevant international fisheries instruments and, on request, in conserving, managing and developing transboundary and straddling stocks under their respective national jurisdictions².

As a member, the EU is entitled to participate in, and vote on, its decisions. The WECAFC endeavours to take its decisions by consensus. In other cases, decisions are taken by a majority of the votes cast, except as otherwise provided by its rules of procedure.

2.3. Decisions adopted by the Western Central Atlantic Fishery Commission

Under Article 6(h) of its revised statutes, the WECAFC gives advice on management measures ('recommendations' and 'resolutions') to member governments and the relevant fisheries organisations. Because of its advisory status, the WECAFC's decisions are not binding on its members.

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

Consistent with the procedures applicable to regional fisheries management organisations (RFMOs), the position to be adopted on behalf of the EU at the annual meetings of RFBs such as the WECAFC shall be established using a two-tier approach. A Council Decision sets out

¹ Council Decision of 25 November 1991 on the accession of the European Economic Community to the Food and Agriculture Organization of the United Nations (FAO).

² FAO Resolution 1/131 of 2006 amending the WECAFC Statutes and revising FAO Resolutions 4/61 of 1973 and 3/74 of 1978.

the guiding principles of the EU's position on a multiannual basis, and it is subsequently adjusted before each annual meeting by Commission services non-papers to be endorsed by the Council.

For the WECAFC, this approach is implemented by Council Decision (EU) 2019/1563 of 16 September 2019, which sets out the EU's position in the WECAFC for the period 2019-2023. The Decision contains general principles, but also takes into account as far as possible the specific features of the WECAFC. 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) 2019/1563 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) 2019/1563 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 WECAFC for the period 2024-2028, thereby replacing Council Decision (EU) 2019/1563.

The current proposal takes into consideration, 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.

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 ('the Treaty') provides for decisions establishing 'the positions to be adopted on the EU's behalf in a body set up by

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, 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.

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’.

The concept of ‘acts having legal effects’ includes 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’¹¹.

4.1.2. Application to this case

The WECAFC is a technical and regional fisheries body set up by FAO resolution 4/61 of 1973, under Article VI (1) of the FAO Constitutions. While the WECAFC decisions (‘recommendations’ and ‘resolutions’) are not binding on its members, acts that the WECAFC is called on to adopt do constitute acts capable of decisively influencing the content of the legislation adopted by the EU legislature.

The envisaged act does not supplement or amend the institutional framework of the agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) of the Treaty.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) of the Treaty depends primarily on the objective and content of the envisaged act in respect of which a position is being 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) of the Treaty must have a single substantive legal basis, which is that required by the main aim or component.

4.2.2. Application to this case

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

Therefore, the substantive legal basis of the proposed Decision is Article 43(2) TFEU. The Decision will replace Council Decision (EU) 2019/1563, which covers the period 2019-2023.

4.3. Conclusion

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

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.

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on the position to be taken on behalf of the European Union in the Western Central Atlantic Fishery Commission and repealing Decision (EU) 2019/1563

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'), 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 European Union is a member of the Western Central Atlantic Fishery Commission (WECAFC), a regional fishery commission of the Food and Agriculture Organization of the United Nations (FAO), established under Article VI (1) of the FAO Constitution.
- (2) The Union is a member of the FAO¹
- (3) Pursuant to paragraph (h) of Article 6 of its revised statutes, the WECAFC may adopt recommendations and resolutions. Because of its advisory status, the WECAFC's decisions are not binding on its members.
- (4) The WECAFC may adopt recommendations and resolutions on the conservation and management of living marine resources.
- (5) 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 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. Furthermore, Regulation (EU) No 1380/2013

¹ Council Decision of 25 November 1991 on the accession of the European Economic Community to the Food and Agriculture Organization of the United Nations (FAO).

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.

- (6) 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.
- (7) 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.
- (8) 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.
- (9) It is appropriate to establish the position to be taken on the Union's behalf in the WECAFC in 2024-2028, as the WECAFC is called upon to adopt non-binding acts that are capable of decisively influencing the content of EU law, namely Council Regulation (EC) No 1005/2008⁹; Council Regulation (EC) No 1224/2009¹⁰; and Regulation (EU) 2017/2403 of the European Parliament and of the Council¹¹.

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 Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) 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).

¹⁰ 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).

¹¹ 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).

- (10) Currently the position to be taken on the Union's behalf in the WECAFC is established by Council Decision (EU) 2019/1563¹². It is appropriate to repeal that Decision and establish a new Decision for the period 2024-2028.
- (11) In view of the evolving nature of fishery resources in the WECAFC's area and the 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 WECAFC, procedures should be established for the year-to-year specification of the Union's position in 2024-2028. These 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 sessions of the Western Central Atlantic Fishery Commission (WECAFC) 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 WECAFC 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 before the annual meeting of the WECAFC in 2029.

Article 4

Decision (EU) 2019/1563 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

¹² The Council Decision (EU) 2019/1563 of 16 September 2019 on the position to be taken on behalf of the European Union within the Western Central Atlantic Fishery Commission (WECAFC) (OJ L 241, 19.9.2019, p.2).