



Brussels, 16.5.2025
COM(2025) 255 final

Recommendation for a

COUNCIL DECISION

**authorising the opening of negotiations on an amendment of Article 1(a) of the
Convention for the Protection of the Marine Environment of the North-East Atlantic**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Convention for the Protection of the Marine Environment of the North-East Atlantic ('the OSPAR Convention') was concluded by the Union by Council Decision 98/249/EC of 7 October 1997¹ and entered into force on 25 March 1998.

Spain and Portugal have submitted a proposal pursuant to Article 15(2) of the OSPAR Convention to amend Article 1(a) of the OSPAR Convention to include the waters surrounding Macaronesia (Madeira and the Canary Islands) to the maritime area governed by the OSPAR Convention. These waters include waters under Portuguese and Spanish jurisdiction, as well as international waters in between². The proposed amendment aims to ensure a greater coherence between the OSPAR Convention and the rules of Directive 2008/56/EC³ which are already applicable in the Macaronesia area, thereby improving the coordination of the protection and conservation of the rich biodiversity and vulnerable ecosystems present in the Macaronesia area.

In this context, it should be noted that Article 6(1) of Directive 2008/56/EC requires the Member States to use "*existing regional institutional cooperation structures, including those under Regional Sea Conventions, covering that marine region or subregion*" to coordinate their marine strategies. According to Article 4 of Directive 2008/56/EC, the Macaronesia sub-region is part of the North-East Atlantic region. It is the largest marine sub-region of the European seas and holds a rich diversity of habitats and species, including some that are included in the OSPAR list of "threatened and/or declining species & habitats". At present, the OSPAR maritime area only partly covers the waters of the Macaronesia sub-region that has been delimited and agreed at EU level.

Therefore, by aligning the maritime area of the OSPAR Convention as regards the Macaronesia sub-region with that of Directive 2008/56/EC, the implementation of that Directive by Spain and Portugal (which are the two EU Member States having territorial waters in the Macaronesia sub-region) will be facilitated through enhanced cooperation at OSPAR level.

In addition, in the same way, the protection of the vulnerable species and habitats of this region and of its unique marine and coastal biodiversity will be strengthened, in line with the rules of applicable Union legislation including Council Directive 92/43/EEC⁴, Directive 2009/147/EC⁵, Regulation (EU) 2024/1991⁶ and the EU biodiversity strategy for 2030⁷. This

¹ Council Decision 98/249/EC of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic (OJ L 104, 3.4.1998, p. 1)

² The proposal totals an area of 2 573 750 km², of which 875 947 km² are within Portuguese and Spanish EEZ and territorial waters and 1 697 803 km² are High Seas (944 425 km² of which are within Portuguese and Spanish Extended Continental Shelves and 753 378 km² are Area)

³ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

⁵ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

⁶ Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 (OJ L, 2024/1991, 29.7.2024).

proposal for an amendment to Article 1(a) of the OSPAR Convention will be discussed during the 28th regular session/meeting of the OSPAR Commission starting on 23 June 2025. Pursuant to Article 15(3) of the OSPAR Convention, the amendment is to be adopted by unanimous vote of the Contracting Parties.

Following its adoption by the OSPAR Commission, pursuant to Article 15(4) and (5) of the OSPAR Convention, the amendment would be submitted to the Contracting Parties for ratification, acceptance or approval, and the amendment would only enter into force after receipt by the depositary of notification of ratification, acceptance or approval of at least seven Contracting Parties.

Until the amendment to the OSPAR Convention enters into force, Contracting Parties may provisionally apply it, under the conditions set out in Article 25 of the Vienna Convention on the Law of the Treaties of 23 May 1969 on provisional application.

In view of the fact that, to enter into force, the proposed amendment to Article 1(a) of the OSPAR Convention requires ratification, acceptance or approval by the Contracting Parties, which would, for the Union, require a Council Decision pursuant to Article 218(6) TFEU, in order to allow the Union to participate in the discussion and adoption of this amendment at the 28th regular session/meeting of the OSPAR Commission, a Council Decision pursuant to Article 218(3)-(4) TFEU should be adopted.

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

The proposed amendment aims to ensure a greater coherence between the OSPAR Convention and the rules of Directive 2008/56/EC which are already applicable in the entire Macaronesia area, thereby improving the coordination of the protection and conservation of the rich biodiversity and vulnerable ecosystems present in the Macaronesia area.

Article 6(1) of Directive 2008/56/EC requires the Member States to use “*existing regional institutional cooperation structures, including those under Regional Sea Conventions, covering that marine region or subregion*” to coordinate their marine strategies. According to Article 4 of Directive 2008/56/EC, the Macaronesia sub-region is part of the North-East Atlantic region. It is the largest marine sub-region of the European seas and holds a rich diversity of habitats and species, including some that are included in the OSPAR list of “threatened and/or declining species & habitats”. At present, the OSPAR maritime area only partly covers the waters of the Macaronesia sub-region that has been delimited and agreed at EU level.

Therefore, by aligning the maritime area of the OSPAR Convention as regards the Macaronesia sub-region with that of Directive 2008/56/EC, the implementation of that Directive by Spain and Portugal (which are the two EU Member States having territorial waters in the Macaronesia sub-region) will be facilitated through enhanced cooperation at OSPAR level.

In addition, in the same way, the protection of the vulnerable species and habitats of this region and of its unique marine and coastal biodiversity will be strengthened, in line with the rules of applicable Union legislation including Council Directive 92/43/EEC, Directive 2009/147/EC and Regulation (EU) 2024/1991.

⁷ 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 final).

- **Consistency with other Union policies**

The concerned regions are outermost regions of the European Union within the meaning of Article 349 of the Treaty on the Functioning of the European Union. In line with this article of the Treaty, the European Commission has adopted a strategy for the outermost regions which aims to ensure that all EU policies, legislation and programmes support these outermost regions. As such, the extension of the OSPAR Convention to these two outermost regions reinforces coherence with the EU's policy for the outermost regions.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposed amendment aims to ensure a greater coherence between the OSPAR Convention and the rules of Directive 2008/56/EC which are already applicable in the entire Macaronesia area, thereby improving the coordination of the protection and conservation of the rich biodiversity and vulnerable ecosystems present in the Macaronesia area. The aim of the proposed amendment is thus protection of the environment. Therefore, the appropriate legal basis of the recommendation is Article 192(1) TFEU.

- **Union competence**

The amendment concerned by the present recommendation aims to include the waters surrounding Macaronesia (Madeira and the Canary Islands) to the maritime area governed by the OSPAR Convention, thus achieving a greater coherence between the OSPAR Convention and the rules of Directive 2008/56/EC which are already applicable in the entire Macaronesia area, thereby improving the protection of biodiversity and vulnerable ecosystems in that area. The subject-matter of this amendment is thus the protection of biodiversity and vulnerable ecosystems in the waters surrounding Macaronesia.

The Union has competence in the field of environmental protection pursuant to Article 4(2)(e) TFEU. In addition, it has exercised this competence with regard to the specific subject-matter of this amendment, i.e. the protection of biodiversity and vulnerable ecosystems in the waters surrounding Macaronesia, through the adoption of Directive 2008/56/EC, Council Directive 92/43/EEC, Directive 2009/147/EC and Regulation (EU) 2024/1991.

- **Subsidiarity**

Given that the objective of this amendment concerns achieving greater coherence between the OSPAR Convention and the rules of Union legislation, in particular those of Directive 2008/56/EC, action at Union level is more effective than action at national level.

Proportionality

Including the waters surrounding Macaronesia in the maritime area governed by the OSPAR Convention is the only way to achieve a greater coherence between the OSPAR Convention and the rules of Directive 2008/56/EC, thereby improving the protection of biodiversity and vulnerable ecosystems in that area. This inclusion is also the only way in which implementation of Directive 2008/56/EC as regards the Macaronesia sub-region can be facilitated through enhanced cooperation at OSPAR level, in line with Article 6(1) of Directive 2008/56/EC, which requires the Member States to use “*existing regional institutional cooperation structures, including those under Regional Sea Conventions, covering that marine region or subregion*” to coordinate their marine strategies.

Therefore, this recommendation supporting the inclusion of the waters surrounding Macaronesia in the maritime area governed by the OSPAR Convention is in line with the principle of proportionality.

- **Choice of the instrument**

A Commission Recommendation for a Council Decision authorising the opening of negotiations is in line with Article 218(3) TFEU, which provides that the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations.

In view of the adoption procedure for the proposed amendment pursuant to Article 15 of the OSPAR Convention, and in particular the fact that the amendment would only enter into force following its ratification, acceptance or approval of at least seven Contracting Parties (Article 15(4) and (5) of the OSPAR Convention), the appropriate procedure to ensure Union participation in the discussions as regards the proposed amendment in the context of the 28th regular session/meeting of the OSPAR Commission is the adoption of a Council decision pursuant to Article 218(3)-(4) TFEU.

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

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

N/A

- **Stakeholder consultations**

N/A

- **Collection and use of expertise**

N/A

- **Impact assessment**

N/A

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

N/A

4. BUDGETARY IMPLICATIONS

The present recommendation does not have budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

N/A

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

Given that this recommendation only concerns one amendment/provision, all necessary explanations have been provided in the preceding sections of this Explanatory Memorandum.

- **The choice of the negotiator**

Given that the envisaged agreement exclusively covers matters other than the Common Foreign and Security Policy, the Commission must be designated as the negotiator pursuant to Article 218(3) TFEU.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on an amendment of Article 1(a) of the Convention for the Protection of the Marine Environment of the North-East Atlantic

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Convention for the Protection of the Marine Environment of the North-East Atlantic ('the OSPAR Convention') was concluded by the Union by Council Decision 98/249/EC of 7 October 1997⁸ and entered into force on 25 March 1998.
- (2) Spain and Portugal have submitted a proposal pursuant to Article 15(2) of the OSPAR Convention to amend Article 1(a) of the OSPAR Convention to include the waters surrounding Macaronesia (Madeira and the Canary Islands) in the maritime area governed by the OSPAR Convention.
- (3) The proposed amendment aims to ensure a greater coherence between the OSPAR Convention and the rules of Directive 2008/56/EC⁹ which are already applicable in the Macaronesia area, thereby improving the coordination of the protection and conservation of the rich biodiversity and vulnerable ecosystems present in the Macaronesia area.
- (4) This proposal for an amendment to Article 1(a) of the OSPAR Convention will be discussed during the 28th regular session/meeting of the OSPAR Commission starting on 23 June 2025. Pursuant to Article 15(3) of the OSPAR Convention, the amendment is to be adopted by unanimous vote of the Contracting Parties.
- (5) Following its adoption by the OSPAR Commission, pursuant to Article 15(4) and (5) of the OSPAR Convention, the amendment would be submitted to the Contracting Parties for ratification, acceptance or approval, and the amendment would only enter into force after receipt by the depositary of notification of ratification, acceptance or approval of at least seven Contracting Parties.
- (6) The Union should participate in the negotiations of the proposed amendment to Article 1(a) of the OSPAR Convention in the context of the 28th regular session/meeting of the OSPAR Commission.

⁸ Council Decision 98/249/EC of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic (OJ L 104, 3.4.1998, p. 1)

⁹ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to participate, on behalf of the Union, in the negotiations within the Commission of the Convention for the Protection of the Marine Environment of the North-East Atlantic ('OSPAR Convention') on an amendment to Article 1(a) of the OSPAR Convention including the waters surrounding Macaronesia (Madeira and the Canary Islands) in the maritime area governed by the OSPAR Convention.

Article 2

The negotiating directives are set out in the Annex.

Article 3

The negotiations shall be conducted in consultation with the Council Working Party on the Environment which is hereby designated as the special committee within the meaning of Article 218(4) the Treaty on the Functioning of the European Union.

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*