



Brussels, 30.8.2019
COM(2019) 378 final

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations on behalf of the European Union at the Thirty-First Meeting of the Contracting Parties on the amendments to the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances ('Bonn Agreement') with regard to the accession of the Kingdom of Spain to the Agreement and with regard to the extension of the scope of application of the Agreement

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The present recommendation concerns the decision authorising the Union negotiator (in this case: the Commission) to negotiate the position on the Union's behalf in the context of the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances ('Bonn Agreement' or 'the Agreement') in connection with the envisaged adoption of two decisions at the upcoming Meeting of the Contracting Parties of the Bonn Agreement, namely

- to facilitate the extension of the scope of application of the Agreement with a view to improving cooperation on surveillance in respect of the requirements of Annex VI to the MARPOL Convention ('MARPOL amendment'), and
- to enable the Accession of the Kingdom of Spain to the Agreement and to introduce the necessary consequential amendments to the Agreement ('Spain amendment').

1.1. The Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances (the 'Bonn Agreement')

The Bonn Agreement aims to combat pollution in the North Sea Area and safeguard coastal areas from maritime disasters and chronic pollution from ships and offshore installations. The Agreement entered into force on 1 September 1989.

The European Union (then 'European Economic Community') is a Contracting Party to the Agreement (as amended)¹. North Sea States of the European Union² together with Norway are also Contracting Parties to the Agreement.

The Agreement seeks to promote active cooperation and mutual assistance among coastal States and the European Union in combating pollution of the North Sea by oil and other harmful substances in order to protect the marine environment and the interests of coastal States. To that effect, the Agreement provides that Contracting Parties carry out surveillance as an aid to detecting and combating pollution and to preventing violations of anti-pollution regulations. The North Sea is divided into different zones where the responsibility for the surveillance and assessment of incidents is assigned to Contracting Parties. Contracting Parties are required to inform any other Contracting Party concerned of their becoming aware of the presence of oil or other harmful substances likely to constitute a serious threat to the coast or related interests of any other Contracting Party. Contracting Parties may require assistance to deal with pollution at sea or on their coasts, in which case the Contracting Parties called upon for help are required to use their best endeavours to bring such assistance as is within their power.

¹ Council Decision 84/358/EEC of 28 June 1984 concerning the conclusion of the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (OJ L 188, 16.7.1984, p.7). The Agreement was amended in 1989; those amendments entered into force on 1 April 1994. The European Economic Community approved those amendments by Council Decision 93/540/EEC of 18 October 1993 (OJ L 263, 22.10.1993, p.51).

² Belgium, Denmark, France, Germany, Ireland, the Netherlands, Sweden, and the United Kingdom of Great Britain and Northern Ireland (status of ratifications on 10.4.2019).

The Depositary of the Bonn Agreement is the Government of the Federal Republic of Germany (Article 18(3) Bonn Agreement).

Contracting Parties make decisions with respect to the Agreement, in accordance with the relevant provisions of the Bonn Agreement and the related Rules of Procedures; they are assisted by a Secretariat and subsidiary bodies (such as the Working Group on Operational, Technical and Scientific Questions Concerning Counter-Pollution Activities [OTSOPA]).

Pursuant to Article 16 of the Agreement, each Contracting Party may bring a proposal for the amendment of the Agreement or its Annex for the consideration and vote at a meeting of the Contracting Parties. Following the *ad referendum* adoption of the proposed amendment by unanimous vote of the Contracting Parties at a Meeting of the Contracting Parties, (Article 16(1) Bonn Agreement), the envisaged amendment is to be communicated to the Contracting Parties to be approved according to the internal procedure of each Contracting Party. The amendment enters into force after all Contracting Parties notify their approval to the Depositary.

Pursuant to Article 20 of the Agreement, the Contracting Parties may unanimously invite any other coastal State of the North East Atlantic area to accede to the Agreement (Article 20(1) Bonn Agreement). Article 2 of the Agreement and its Annex are to be amended as necessary. Once adopted unanimously by the Contracting Parties, the amendments to Article 2 and the Annex to the Agreement will take effect upon the entry into force of the Bonn Agreement for the acceding State (i.e. Spain), which will happen on the first day of the second month following the date of deposit by that State of its instrument of accession. (Article 20(2) Bonn Agreement).

1.2. The envisaged amendments to the Bonn Agreement

1.2.1. The 'MARPOL amendment' - amending the substantive scope of the Agreement

The Contracting Parties to the Bonn Agreement are set to adopt, during their thirty-first meeting (8 to 10 October 2019) a decision under Article 16 of the Agreement, concerning the extension of the Agreement's scope to also cover surveillance of ship-based air-pollution in respect of the requirements of Annex VI to the MARPOL Convention.

This amendment aims at improving cooperation and coordination between the Contracting Parties in combating unlawful air emissions caused by shipping in order to limit the negative consequences of the combustion of marine fuels with high sulphur or nitrogen content for human health, biodiversity and the entire marine environment. The Contracting Parties envisage to achieve the above through amending various provisions of the Bonn Agreement (Articles 1, 5, 6 and 15 thereof, as well as the title of the Agreement and the preamble thereto) so as to extend its scope of application to air pollution from ships as regulated under Annex VI to the MARPOL Convention.

1.2.2. The 'Spain amendment' – amending the geographical scope of the Agreement

The Contracting Parties are also envisaging amendments to the Agreement under Article 20 thereof, whereby the Kingdom of Spain is to be invited to accede to the Agreement. The envisaged amendment concerns Article 2 of the Agreement by specifying the Atlantic boundary of the North Sea area relevant for the purpose of the Agreement and the Annex thereto, while revising the boundaries of various zones of surveillance for the purpose of Article 6 of the Agreement.

More specifically, a new definition of the revised area covered by the Agreement is to be determined. France has accepted the introduction of a new zone of responsibility of France that is directly contiguous with the zone of joint responsibility of France and the United Kingdom. It covers the area between the zone of joint responsibility of France and the United Kingdom and the new zone of responsibility of Spain in order to close any gaps between the old boundary of the Bonn Agreement and the new zone of responsibility of Spain.

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

Proposed amendment on monitoring emissions from ships will contribute to the prevention of marine pollution at large and, in this way, will also support the EU climate action and EU's commitments to the Paris Agreement on climate change.

The changes proposed are fully consistent with the broader objective of working towards a 'Europe that protects', which has guided the efforts of the Commission during the past years, and will continue to do so in the coming future. This proposal builds on the positive results the existing framework has delivered so far and intends to enhance efficient use of resources so as to strengthen coordination and cooperation of the Contracting Parties of the Bonn Agreement.

- **Consistency with other Union policies**

The recommendation is consistent with other Union policies.

In particular it contributes to two of the ten political priorities set out by the Commission for the 2015-2019 period, namely the achievement of 'An Area of Justice and Fundamental Rights Based on Mutual Trust' and the 'A resilient Energy Union with a forward-looking climate change policy'.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

2.1.1. Principles

The conclusion of an international agreement on behalf of the Union requires the involvement of both the Council and the European Parliament (Article 218(3)-(6) TFEU). Amendments to international agreements can be varying in degree, ranging from purely technical adaptations to substantive changes requiring important adaptations to the structure of the agreement. The characterisation of the amendment can have a bearing on the internal Union procedure to be applied in order to approve the amendment in question.

While in the case of purely technical amendments or those that can be adopted through 'implementing acts', simplified procedure can be applied (i.e. the ones set out in Article 218(7) and (9) TFEU), for substantive changes, as a matter of principle, the same procedure as for the conclusion of the international agreement must apply.

The amendment of the scope of an international agreement is to be considered, as a general rule, a substantive amendment, necessitating, thus, the application of the procedure as for its conclusion, i.e. Article 218(3)-(6) TFEU.

In order to open the procedure, the Council, based on the recommendation of the Commission, shall adopt a decision authorising the Union negotiator (depending on the subject matter, it can be either the Commission or the High Representative) to open negotiations with a view of having the amendments approved. This is provided for by Article 218(3) and (4) TFEU.

Article 218(3) and (4) TFEU provide as follows:

“3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.”

2.1.2. Application to the present case

In the case of the Bonn Agreement at the Meeting of 8-10 October 2019, the Contracting Parties are to decide on two amendments, one concerning the extension of the geographical scope (Spain amendment), and another amendment concerning the extension of the material scope (MARPOL amendment) of the Agreement. These are substantive amendments to be approved in accordance with the same procedure as would be required for the conclusion of the Bonn Agreement.

The Union is a Contracting Party to the Bonn Agreement. The envisaged amendments concern competences of the Union in the area of civil protection and environment.

In view of the nature of the competences involved, the Commission should recommend that the Council authorises it to negotiate concerning the envisaged amendments to the Bonn Agreement at the upcoming 31st Meeting of the Contracting Parties with a view to obtain approval of those amendments.

Both amendments, in their current draft status, directly contribute content-wise to the pursuit of relevant EU policy objectives. Therefore, the negotiating position of the Union should consist in supporting the approval of both amendments. The position of the Union being uncontroversial, it is not necessary to propose negotiating directives within the meaning of Article 218(4) TFEU.

The texts of the proposed draft amendments are to be annexed to the Commission recommendation.

Taking the above into account, the procedural legal basis for the recommended Council decision is Article 218(3) and (4) TFEU.

2.2. Conclusion

In view of the necessity to negotiate and endorse the amendments to the Bonn Agreement, a Recommendation for a Council Decision authorising the opening of negotiations on behalf of the European Union should be based on Article 218(3) and (4) TFEU as legal bases.

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

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

NA

- **Stakeholder consultations**

NA

Both amendments are non-contentious and all Contracting Parties, including all the individual Member States that are parties to the Agreement support them.

- **Collection and use of expertise**

NA

- **Impact assessment**

NA

Due to the political imperative to move ahead quickly in order for the EU, as a Contracting Party to the Bonn Agreement, to be able to negotiate and vote on the amendments to the Bonn Agreement at the Contracting Parties' meeting on 8-10 October 2019 as well as to endorse them at the Ministerial Meeting on 11 October 2019, the formal impact assessment process has been waived. This proportionate approach is also justified because it is expected that the amendments to the Bonn Agreement will have only positive economic, social and environmental impacts.

- **Regulatory fitness and simplification**

NA

- **Fundamental rights**

NA

The recommendation is consistent with the EU Treaties and the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

The amendment to the Bonn Agreement will have no negative impact on the budget of the Union.

5. OTHER ELEMENTS

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

NA

- **Explanatory documents (for directives)**

NA. See section below.

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

The sole substantive article of the proposal provides for the Council's authorisation for the Commission to negotiate, on behalf of the Union, the envisaged amendments to the Bonn Agreement concerning the material extension of the scope of the Agreement in relation to Annex VI of the MARPOL Convention, and the geographical extension of the Agreement in relation to the accession of Spain thereto. The Commission should support these amendments, even if they undergo minor changes during the negotiations.

The latest versions of the envisaged amendments are presented in the Annexes to the Decision and can be summarised as follows:

The 'MARPOL amendment'

The Contracting Parties to the Bonn Agreement seek to take advantage of the routines and systems for aerial monitoring of oil pollution established under the Agreement to expand

those to include surveillance related to compliance monitoring of emissions from ships. By so doing, the Contracting Parties will be able to make the most out of the resources already used for aerial monitoring and surveillance for oil spills and form the basis for a holistic system for environmental monitoring of the North Sea and its approaches.

The adoption of the decision to propose to the Contracting Parties to approve the extension of the mandate of the Bonn Agreement in relation to Annex VI to the MARPOL Convention would improve joint surveillance, monitoring and reporting of ship emissions in the North Sea area. Such coordinated activity within the Agreement would contribute to lower the risks to the marine environment and the interests of coastal States and of the Union.

The 'Spain amendment'

Bonn Agreement Contracting Parties meeting in 2018 unanimously supported the invitation of Spain to accede to the Bonn Agreement. The Contracting Parties highlighted that the inclusion of the Bay of Biscay would improve the setup of the Agreement, and that the Spanish work and expertise would be of great benefit for the Bonn Agreement and its Contracting Parties. They also appreciated the participation of Spain as an observer to the Bonn Agreement in the past and Spain's reliable and valuable contributions to the work and success of the Agreement.

Accordingly, an invitation letter to Spain was sent on 30 October 2018. Spain replied on 21 November 2018 by affirming its wish to accede to the Bonn Agreement.

The accession of Spain will result in a new boundary that extends the area covered by the Agreement to the south. Accordingly, Article 2(c) and Part I of the Annex have to be rephrased. Part III of the Annex should be supplemented by the coordinates of the new zones of responsibility of France and Spain.

France and Spain met bilaterally in November/December 2018 to negotiate the coordinates of the new common boundary and zones of responsibility of both Contracting Parties. France has accepted the introduction of its new zone of responsibility that is directly contiguous with the zone of joint responsibility of France and the United Kingdom, closing any gaps between the old boundary of the Bonn Agreement and the new zone of responsibility of Spain. That is way the Bay of Biscay becomes a new important component of the area covered by the Agreement.

By including the Finisterre Traffic Separation Scheme into the area covered by the Bonn Agreement, the Contracting Parties make sure that the main traffic route in Europe connecting the North Sea and the Mediterranean Sea is covered by a commonly coordinated preparedness and response management system.

It therefore appears from the above that the accession of Spain to the Bonn Agreement would directly benefit the cooperation among coastal States under the Bonn Agreement.

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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 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances ('the Bonn Agreement' or 'the Agreement') was concluded by the Union (then 'European Economic Community') by Council Decision 84/358/EEC of 28 June 1984³. The Agreement entered into force on 1 September 1989. The Agreement was amended in 1989; those amendments entered into force on 1 April 1994. The Union (then 'European Economic Community') approved those amendments by Council Decision 93/540/EEC of 18 October 1993⁴.
- (2) Pursuant to Article 16 of the Agreement, a proposal by a Contracting Party for the amendment of the Agreement or its Annex is to be considered at a meeting of the Contracting Parties. Following adoption of the proposal by unanimous vote, the amendment shall be communicated by the Depositary Government to the Contracting Parties. Such an amendment is to enter into force on the first day of the second month following the date on which the Depositary Government has received notifications of approval from all Contracting Parties.
- (3) Pursuant to Article 20 of the Agreement, the Contracting Parties to the Agreement may unanimously invite any other coastal State of the North East Atlantic area to accede to the Agreement. In such a case, Article 2 of the Agreement and its Annex are to be amended as necessary.
- (4) The Contracting Parties to the Bonn Agreement, during their thirty-first meeting from 8 to 10 October 2019, are to adopt, by unanimity, a decision under Article 16 of the Agreement to adopt amendments facilitating the extension of the scope of application of the Agreement with a view to improving cooperation on surveillance in respect of the requirements of Annex VI to the MARPOL Convention, as well as the decision under Article 20 of the Agreement to enable the Accession of the Kingdom of Spain to the Agreement and to introduce the related amendments.

³ OJ L 188, 16.7.1984, p. 7.

⁴ OJ L 263, 22.10.1993, p.51.

- (5) As the Contracting Parties are to amend the geographical and material scope of the Agreement, it is appropriate for the Union to authorise the Commission, as the Union negotiator, to negotiate these amendments on behalf of the Union.
- (6) The adoption of the decision to propose to the Contracting Parties to approve the extension of the mandate of the Bonn Agreement in relation to Annex VI to the MARPOL Convention would improve joint surveillance, monitoring and reporting of ship emissions in the North Sea area. Such coordinated activity within the Agreement would contribute to lower the risks to the marine environment and the interests of coastal States and of the Union.
- (7) The accession of Spain would lead to the inclusion of the Bay of Biscay under the area covered by the Agreement; activities under the Agreement would also benefit from the work and expertise of Spain in this respect. Inclusion of the Finisterre Traffic Separation Scheme will mean that the main traffic route in Europe connecting the North Sea and the Mediterranean Sea would be covered by a commonly coordinated preparedness and response management system. It appears therefore that the scope and effectiveness of the cooperation under the Agreement would be improved.
- (8) In light of the above, the Union should therefore support the amendments to the Bonn Agreement, both concerning the material extension of the scope of the Agreement in relation to Annex VI of the MARPOL Convention, and concerning the geographical extension of the Agreement in relation to the accession of Spain.
- (9) The Council should authorise the Commission to negotiate and express the support, on behalf of the Union, to adopt the envisaged amendments,

HAS ADOPTED THIS DECISION:

Article 1

1. The Commission is hereby authorised to negotiate, on behalf of the Union, the envisaged amendments to the Bonn Agreement concerning the material extension of the scope of the Agreement in relation to Annex VI of the MARPOL Convention, and the geographical extension of the Agreement in relation to the accession of Spain thereto.
2. The position to be taken on the Union's behalf at the Thirty-First Meeting of the Contracting Parties to the Bonn Agreement shall be to support the amendments to the Agreement in line with the envisaged amendment texts annexed to this Decision.
3. Minor changes may be brought to the the envisaged amendment texts without calling into question the support of the Union thereto.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*