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Proposal for a

**COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Convention for the  
Protection of the Marine Environment of the North-East Atlantic at the ministerial  
meeting of June 2025**

## **EXPLANATORY MEMORANDUM**

### **1. SUBJECT MATTER OF THE PROPOSAL**

This proposal concerns the position to be taken on the Union's behalf in the ministerial segment of the OSPAR Commission meeting of June 2025 of the Convention for the protection of the marine environment of the North-East Atlantic (the 'OSPAR Convention').

### **2. CONTEXT OF THE PROPOSAL**

#### **2.1. The OSPAR Convention**

The OSPAR Convention aims to protect the North-East Atlantic maritime area against the adverse effects of human activities to safeguard human health, conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected. It has 16 Contracting Parties: Belgium, Denmark, the EU<sup>1</sup>, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom, and Switzerland. The Convention was open for signature at the Ministerial Meeting of the Oslo and Paris Commissions on 22 September 1992 and entered into force on 25 March 1998.

#### **2.2. The OSPAR Commission**

The OSPAR Commission (established according to Article 10 of the Convention) is made up of representatives of each of the Contracting Parties; it meets at regular intervals and at any time deemed necessary because of special circumstances. Its duties include supervising the implementation of the Convention and reviewing the OSPAR priorities, the condition of the maritime area, the effectiveness of the measures being adopted, and the need for any additional or different measures.

According to Article 20 of the Convention, each Contracting Party has one vote in the OSPAR Commission. The EU is entitled to a number of votes equal to the number of its Member States, that are Contracting Parties to the Convention. The EU shall not exercise its right to vote when its Member States exercise their right to vote and vice-versa.

According to Article 15(3) of the Convention, the OSPAR Commission shall adopt amendments of the Convention by the unanimous vote of the Contracting Parties.

#### **2.3. The envisaged act of the OSPAR Commission**

During the ministerial segment of its annual meeting the OSPAR Commission is set to adopt a decision amending Article 1(a) of the Convention to adjust the limits of the OSPAR maritime area to include waters under Portuguese and Spanish jurisdiction and international waters in between<sup>2</sup>.

The aim of this first envisaged act is to add the waters surrounding Macaronesia (Madeira and the Canaries Islands) to OSPAR's maritime area and to ensure a greater coherence of OSPAR with the EU Marine Strategy Framework Directive<sup>3</sup> (MSFD) thereby improving the

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<sup>1</sup> 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)

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

<sup>3</sup> 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).

coordination of the protection and conservation of the rich biodiversity and vulnerable ecosystems present in the Macaronesia area.

The amendment to the Convention will enter into force for those Contracting Parties that have ratified, accepted or approved it on the thirtieth day after receipt by the Depositary Government of notifications by at least seven Contracting Parties, in accordance with the provisions of Article 15 of the OSPAR Convention. Thereafter the amendment shall enter into force for any other Contracting Party on the thirtieth day after the deposit of their respective ratification, acceptance or approval.

Until the amendment to the OSPAR Convention enters into force, Spain, Portugal and any other Contracting Party, may provisionally apply it, in line with the relevant provisions of the Vienna Convention on the Law of the Treaties of 23 May 1969, in and particularly Article 25 on “provisional application”.

The second envisaged act is an OSPAR decision on preventing and eliminating the use and banning placing on the market of certain products (non-coated expanded polystyrene –(EPS)-, non-coated extruded polystyrene –(XPS)-, and any other form of non-coated foamed plastic in pontoons and buoys) to prevent the release of EPS, XPS and other forms of foamed plastic reaching the marine environment.

The Single Use Plastics Directive (SUPD)<sup>4</sup> only covers restrictions on single-use products (food containers, beverage containers and cups for beverages) made of EPS. It does not cover fisheries related components made of EPS/XPS. However, already during the negotiations on the SUPD, potential new measures covering fishing-related items made of EPS/XPS were considered but the data available at that time were not deemed sufficient. OSPAR has now provided the necessary data and information in a background document<sup>5</sup> to support the proposed decision.

The third envisaged act is an OSPAR measure on managing discharge water from exhaust gas cleaning systems (EGCS) installed on board ships that operate in closed and open modes.

The OSPAR Contracting Parties are particularly concerned about EGCS discharge water in areas where environmental objectives for hazardous substances are not met. A currently unpublished background document provides clear scientific and technical evidence on this. It suggests a prohibition of discharge for all ships equipped with EGCS and sailing within internal waters and territorial seas as a first stage measure. Most of the Contracting Parties support the EGCS discharge water restriction. However, a minority (in particular Norway and UK) would insist to wait for global measures to be developed in the future under the International Maritime Organisation (IMO), because the IMO is the most appropriate organisation for developing rules for international shipping. Globally, more than 40 countries (including OSPAR Contracting Parties) have individually adopted various local restrictions on EGCS discharge waters and an OSPAR measure would promote harmonisation whilst providing legal certainty to the stakeholders at a regional scale. Moreover, the OSPAR secretariat received a confirmation from the IMO Secretariat that establishing such a regional rule is in line with IMO procedures.

In November 2024, the OSPAR Heads of Delegation took note of the lack of consensus among Parties on the level of ambition of a possible OSPAR measure. They agreed that work would continue on developing a draft decision (the only legally binding OSPAR instrument), which would be presented as an option at the ministerial meeting.

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<sup>4</sup> Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment

<sup>5</sup> <https://www.ospar.org/documents?v=60598>

Two options have been formulated for the consideration of the OSPAR Environmental Impact of Human Activities Committee (“EIHA”) meeting that is to be held on 7-11 April 2025:

- (i). a proposal for an OSPAR decision prohibiting discharges from ships equipped with open and closed loop EGCSs in territorial seas;
- (ii). a proposal for an OSPAR decision prohibiting discharges from ships equipped with open and closed loop EGCSs in internal waters and port areas, coupled with a proposal for an OSPAR recommendation to be applied in territorial seas.

The Commission considers that there is an urgent need to adopt EGCS discharge restrictions to protect the marine environment from the discharges’ toxicity, preferably at global level. At IMO level however, because of current industry’s focus to keep the current regulatory framework (i.e. Regulation 4 of Annex VI to the International Convention for the Prevention of Pollution from Ships) allowing their use and only revise the existing non-binding guidelines with low ambition, there is no perspective of an adequate regulatory approach in the short to medium term; this legitimates discharge restrictions at the national or regional levels in various parts of the world, like, in the case of proposals at hand, in the North-East Atlantic (see above).

The Commission has therefore consistently supported an ambitious measure in OSPAR, in line with abovementioned option (i); at the same time, given the abovementioned context, the Commission believes the EU should show flexibility and that option (ii) could be an acceptable compromise; if some Contracting Parties do not accept even this level of ambition, the issue should be referred to the Ministers, as decided also by the OSPAR HODs last November.

The fourth envisaged act is an OSPAR Recommendation on best practices for the management of marine litter, and the fifth envisaged act is a Regional Action Plan for coordinated measures to prevent and reduce underwater noise.

The proposed Recommendation on the application of best environmental practice to reduce marine litter aims to establish a mechanism for reporting on how Contracting Parties are applying and disseminating best practice (developed as OSPAR “Other Agreements”) against marine litter, on their impact and on the need to review or withdraw outdated practices. The OSPAR regional Action Plan on underwater noise identifies the most important actions to be implemented on a regional scale to reduce anthropogenic underwater noise to levels that do not adversely affect the marine environment; one of its aims is to facilitate implementation of EU requirements related to underwater noise by the OSPAR Parties which are also EU Member States.

### **3. POSITION TO BE TAKEN ON THE UNION'S BEHALF**

Article 6(1) of the MSFD 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 the MSFD, 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.

Spain and Portugal, which are the only EU and OSPAR countries that have territorial waters in Macaronesia, have produced a joint proposal for amending the OSPAR Convention to align the OSPAR maritime area with the MSFD delimitations. Such alignment will facilitate the

MSFD implementation for these two countries through enhanced cooperation at OSPAR level. This will also strengthen the protection of the vulnerable species and habitats of this region and of its unique marine and coastal biodiversity.

The proposed OSPAR Decision on the restriction of certain EPS/XPS products is adequately supported by evidence and in line with EU legislation and policies concerning the reduction of plastic pollution of the seas, such as the SUPD and the MSFD; it is therefore proposed that the EU supports the adoption of this Decision.

It is necessary that action aiming at the reduction of discharges from EGCS on board ships is taken in the North-east Atlantic; this is in line with EU legislation such as the MSFD, Directive (EU) 2016/802 relating to a reduction in the sulphur content of certain liquid fuels, the Ship Source Pollution Directive (2005/35/EC) and positions in the IMO and in other international fora, including Regional Seas Conventions around Europe; it will facilitate Member States' efforts for reaching good environmental status (GES) under MSFD and the Water Framework Directive<sup>6</sup>, in particular with regard to contaminants.

Facilitating the application of best practice guidance developed under Regional Action Plans on Marine Litter and adopted by OSPAR will contribute to the reduction of litter in the marine environment, it is therefore proposed that the EU supports the adoption of the related abovementioned recommendation.

Regionally coordinated measures in OSPAR can reduce underwater noise and protect marine life and biodiversity, as well as contribute to more efficient implementation of EU legislation, notably the MSFD; it is therefore proposed that the EU supports the adoption of the OSPAR regional Action Plan on underwater noise.

The envisaged amendment to the OSPAR Convention and the envisaged decision on preventing and eliminating the use and banning the placing on the market of certain products are legally binding on contracting parties in the context of OSPAR; the envisaged decision on managing discharge water from exhaust gas cleaning systems (EGCS), the recommendation for the management of marine litter and the Regional Action Plan for coordinated measures to prevent and reduce underwater noise will create legal effects under international law. In view of the OSPAR Commission meeting from 23-27 June 2025, a Union position on those envisaged measures, that are planned to be adopted, is necessary. Since they will facilitate the implementation of EU policies and legislation and prevent damage to and improve protection of the marine environment and biodiversity, it is proposed that the Union supports their adoption.

## **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 Union'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.'*

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

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<sup>6</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

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*’<sup>7</sup>.

#### *4.1.2. Application to the present case*

The OSPAR Commission is a body set up by an agreement, namely the OSPAR Convention.

The acts which the OSPAR Commission is called upon to adopt constitutes acts having legal effects within the meaning of Article 218(9) TFEU because:

- all OSPAR decisions are legally binding for the Contracting Parties, according to paragraph 2 of Article 13 of the OSPAR Convention;
- The Recommendation on the application of best environmental practice to reduce marine litter and the Regional Action Plan on Underwater Noise generate legal effects under international law, in that they create good faith obligations on the contracting parties to implement them.

As regards the Recommendation, this follows from the fact that Article 13 of the OSPAR Convention explicitly tasks the OSPAR Commission with the adoption of recommendations, and that Article 23 of the OSPAR Convention obliges the contracting parties to report on their compliance with OSPAR recommendations and to promote their implementation.

Moreover, the Regional Action Plan for coordinated measures to prevent and reduce underwater noise will also create legal effects within the meaning of Article 218(9) TFEU because this instrument sets out a series of concrete objectives/measures to be implemented by, among others, contracting parties, to reduce levels of underwater noise and so it is creating good faith obligation under international law for the contracting parties to implement these non-legally binding measures.

The envisaged acts do not supplement or amend the institutional framework of the OSPAR 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 Union'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 act relate to protection of the environment. Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

### **4.3. Conclusion**

The legal basis of the proposed decision should be Article 192(1), in conjunction with Article 218(9) TFEU.

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<sup>7</sup> 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.

## **5. PUBLICATION OF THE ENVISAGED ACT**

As one of acts to be adopted by the OSPAR Commission will amend the OSPAR Convention, to which the Union is a Party, it is appropriate to publish it in the *Official Journal of the European Union* after its adoption.

Proposal for a

## **COUNCIL DECISION**

**on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic at the ministerial meeting of June 2025**

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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The OSPAR Convention ('the Convention') was concluded by the Union by Council Decision 98/249/EC of 7 October 1997<sup>8</sup> and entered into force on 25 March 1998.
- (2) Pursuant to Article 10(3) of the Convention, the Commission established by Article 10(1) of the Convention ("the OSPAR Commission") may adopt Decisions in accordance with Article 13 of the Convention.
- (3) The OSPAR Commission, during its 28th regular session/meeting starting on 23th June 2025, is to adopt (i) Decisions for adjusting the limits of the OSPAR maritime area to include waters under Portuguese and Spanish jurisdiction and international waters in between, for the restriction of certain products in order to prevent the release of plastic in the marine environment, and on management of discharge water from Exhaust Gas Cleaning Systems (EGCS) installed on board ships; (ii) a Recommendation on best practices for the management of marine litter; and (iii) a Regional Action Plan for coordinated measures to prevent and reduce underwater noise.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the OSPAR Commission, as the envisaged measures to be taken by the latter will create legal effects within the meaning of Article 218(9) of the Treaty on the Functioning of the European Union.
- (5) The Union position should be to vote in favour of the abovementioned OSPAR measures because they will facilitate the implementation of EU policies and legislation and prevent damage to and improve protection of the marine environment and biodiversity.

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<sup>8</sup> 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)



HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the [28th] meeting of the OSPAR Commission starting on 23th June 2025 shall be to support the adoption of the following measures:

- (a) the Decisions on the adjustment of the limits of the OSPAR maritime area to include waters under Portuguese and Spanish jurisdiction and international waters in between; on the restriction of certain products in order to prevent the release of plastic in the marine environment; on the management of discharge water from Exhaust Gas Cleaning Systems (EGCS) installed on board ships;
- (b) the Recommendation on best practices for the management of marine litter;
- (c) the Regional Action Plan for coordinated measures to prevent and reduce underwater noise.

*Article 2*

Refinement of the position referred to in Article 1 may be agreed to, in the light of developments at the OSPAR Heads of Delegation meeting on 14-16 May 2025 or at the 28th meeting of the OSPAR Commission on 23-26 June 2025, by the representatives of the Union, in consultation with Member States during on-the-spot coordination meetings, without a further decision of the Council.

Done at Brussels,

*For the Council*  
*The President*