



Brussels, 15 February 2022

CM 1679/22

**Interinstitutional File:
2021/0184(NLE)**

**PECHE
PROCED**

COMMUNICATION

WRITTEN PROCEDURE

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Subject:	COUNCIL DECISION concerning the accession of the European Union to the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean - Authorisation to use the written procedure - Adoption of the Decision - Approval of the Council statement = COMPLETION OF WRITTEN PROCEDURE

Delegations are informed that the written procedure opened by CM 1678/22 of 15 February 2022 was successfully completed on 15 February 2022 at 18.00.

Please note that:

- all delegations voted in favour of the use of the written procedure for the adoption of the Council Decision concerning the accession of the European Union to the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean;
- all delegations voted in favour of the adoption of the abovementioned Council Decision, as set out in documents 12617/21 + ADD 1. The required qualified majority has therefore been reached;
- all delegations agreed to the approval of the following statement to be entered in the Council minutes:

‘The Council is committed to seek the inclusion of provisions on the protection of personal data to be processed in the framework of the Convention in relevant Union legislative acts and to pursue the adoption of further rules on such processing by the North Pacific Fisheries Commission and calls on the Commission to include such provisions in its relevant proposals.’

Therefore, the above Decision of the Council is adopted and the Council statement is approved.

The statements by the Commission are reproduced in the Annex to this CM.

The above statements will be included in the summary of acts adopted by the written procedure as statements to be entered in the Council minutes, in accordance with Article 12(1), third subparagraph, of the Council’s Rules of Procedure.

The European Parliament will be informed in accordance with Article 218(10) TFEU. The Council Decision will be sent to the European Parliament.

The Council Secretariat would like to thank delegations and the Commission for their cooperation.

Statements by the Commission**Statement 1**

By its judgement in joined cases C-103/12 and C-165/12 (European Parliament and Commission v. Council) the Court of Justice clearly confirmed that decisions relating to the conclusion of external fisheries agreements fall fully within the scope of Article 43(2) TFEU (in conjunction with the applicable procedure of Article 218 TFEU, i.e. Article 218(6)(a)(v) for the decisions on the conclusion of the agreements) and rejected the position that such decisions could fall within the scope of Article 43(3) TFEU. The same applies for the accession to multilateral Conventions in the fisheries field.

In relation to the Decision on the accession of the European Union to the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, the Commission regrets the Council's amendment replacing the substantive legal basis of Article 43(2) TFEU with Article 43 (without mentioning the paragraph).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.

Statement 2

The Commission considers that the Decision on depositing on behalf of the Union, the instrument of accession to the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, should refer to the person designated by the negotiator. Therefore, the changes to Article 2 that provide for the Council to deposit the instrument on behalf of the Union are not in accordance with the Treaties.

The Decision on the accession to the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean should indicate that the Commission shall deposit on behalf of the Union the instrument of accession.

The act of the depositing of the accession instrument to an international agreement is an act of external representation of the Union, which, in accordance with Article 17(1) TEU, is the institutional prerogative of the Commission.

The Court of Justice has emphasized that consistent practice by Union institutions that is not in accordance with the EU Treaties ‘cannot alter the rules of the Treaties that the institutions are obliged to respect’ (Case C-687/15 Commission v Council, EU:C:2017:803, para. 42).

While not opposing the adoption of the amendment by the Council by a qualified majority vote, the Commission reserves all its rights in this regard.
