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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2023) 437 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the General Fisheries Commission for the Mediterranean and repealing Decision (EU) 2019/869

Delegations will find attached document COM(2023) 437 final.

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2023/0262 (NLE)

Proposal for a

COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the General Fisheries
Commission for the Mediterranean and repealing Decision (EU) 2019/869**

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 General Fisheries Commission for the Mediterranean for the period 2024-2028 in connection with the envisaged adoption of conservation and management measures.

2. CONTEXT OF THE PROPOSAL

2.1. Agreement establishing the General Fisheries Commission for the Mediterranean

The Agreement establishing the General Fisheries Commission for the Mediterranean ('the GFCM Agreement') aims to ensure the conservation and sustainable use, in the biological, social, economic and environmental terms, of living marine resources, as well as the sustainable development of aquaculture in the area covered by the Agreement. The GFCM Agreement entered into force in 1952. Amendments to the GFCM Agreement were approved in 1963, 1976, 1997 and 2014.

The European Union is a contracting party to the GFCM Agreement, having accepted it under Council Decision 98/416/EC¹. Bulgaria, Greece, Spain, France, Croatia, Italy, Cyprus, Malta, Romania and Slovenia are also contracting parties to the GFCM Agreement.

2.2. General Fisheries Commission for the Mediterranean

The General Fisheries Commission for the Mediterranean (GFCM) is the body established by the GFCM Agreement to ensure the conservation and sustainable use, in the biological, social, economic and environmental terms, of living marine resources, as well as the sustainable development of aquaculture in the Mediterranean, Black Sea, and connecting waters. It adopts conservation and management measures to manage the fishery resources for which it is responsible.

As a member of the GFCM, the EU is entitled to participate in, and vote on, its decisions. There is a declaration of EU competence for the GFCM Agreement. The EU exercises the voting rights of its Member States that are contracting parties: where the EU votes, no EU Member States vote and vice-versa. The GFCM takes its decisions by two-thirds majority of GFCM members present and voting.

2.3. GFCM decisions

The GFCM has the authority to adopt conservation and management measures for the fisheries for which it is responsible, which are binding on the contracting parties.

In accordance with Article 13.3 of the GFCM Agreement, the measures enter into force 120 days after the date on which the contracting parties are notified of them by the GFCM. Contracting parties that object to measures adopted by the GFCM within 120 days from the

¹ OJ L190, 4.7.1998, p. 34.

date of the notification are not bound by that measure. Where more than one third of the contracting parties submit an objection, the other contracting parties are not obliged to implement the contested measure.

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

The position to be adopted on behalf of the EU at the annual meetings of regional fisheries management organisations (RFMOs) is currently established according to a two-tier approach. A Council Decision will set out the guiding principles of the EU's position on a multiannual basis and it is subsequently adjusted for each annual meeting by Commission services non-papers to be endorsed in the Council.

For the GFCM, this approach is implemented by Council Decision (EU) 2019/869 of 14 May 2019, which sets out the EU's position in the GFCM for the period 2019-2023. The Decision contains general principles but also takes into account as far as possible the specific features of the GFCM. 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) 2019/869 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 Council², also taking into account the objectives set out in the Commission Communication on the external dimension of the common fisheries policy³. Moreover, it adjusted the EU's position to the Treaty of Lisbon.

Council Decision (EU) 2019/869 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 GFCM for the period 2024-2028, thereby replacing Council Decision (EU) 2019/869.

The current proposal takes account, in connection with fishing, the European Green Deal, notably Biodiversity⁴, Climate Adaptation⁵ and Farm to Fork Strategies⁶. It also takes into account the Plastics Strategy⁷ and the Zero pollution Action Plan⁸. Furthermore, it also takes into consideration, the International Ocean Governance Joint Communication⁹.

² 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).

³ COM(2011) 424, 13.7.2011.

⁴ 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).

⁵ 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).

⁶ 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)

⁷ 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.

The current revision also takes into account the commitments made by the EU at international level on the Mediterranean and the Black Sea in the Malta MedFish4Ever Ministerial Declaration¹⁰, the Sofia Ministerial Declaration¹¹ and the GFCM 2030 Strategy for sustainable fisheries and aquaculture in the Mediterranean and the Black Sea¹².

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 EU’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.’

‘Acts having legal effects’ include acts that have legal effects by virtue of the rules of international law governing the body in question, and instruments that do not have a binding effect under international law, but are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature’¹³.

4.1.2. Application to the present case

The GFCM is the body set up by an agreement, namely the GFCM Agreement.

The acts that the GFCM is called upon to adopt constitute acts having legal effects. The envisaged acts are to be binding under international law in accordance with Article 13 of the GFCM Agreement and are capable of decisively influencing the content of EU legislation, including:

Council Regulation (EC) No 1005/2008 establishing a Community System to prevent, deter and eliminate illegal, unreported and unregulated fishing¹⁴;

Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy¹⁵; and

⁸ 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

⁹ 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.

¹⁰ Malta MedFish4Ever Ministerial Declaration. Ministerial conference on the sustainability of Mediterranean fisheries (Malta, 30 March 2017)

¹¹ Sofia Ministerial Declaration, High Level Conference on Black Sea fisheries and aquaculture (Sofia, 7 June 2018)

¹² FAO. 2021. GFCM 2030 Strategy for sustainable fisheries and aquaculture in the Mediterranean and the Black Sea. Rome. <https://doi.org/10.4060/cb7562en>

¹³ 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.

¹⁴ OJ L 286, 29.10.2008, p. 1.

¹⁵ OJ L 343, 22.12.2009, p. 1.

Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets¹⁶.

The envisaged acts do not supplement or amend the institutional framework of the GFCM Agreement.

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 EU's behalf. If that 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 fisheries. The legal basis setting 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) 2019/869, which covers the period 2019-2023.

4.3. Conclusion

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

¹⁶ OJ L 347, 28.12.2017, p. 81.

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the General Fisheries Commission for the Mediterranean and repealing Decision (EU) 2019/869

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Decision 98/416/EC¹ the Union concluded the Agreement establishing the General Fisheries Commission for the Mediterranean ('GFCM Agreement'). Bulgaria, Croatia, Cyprus, France, Greece, Italy, Malta, Romania, Slovenia and Spain are also Contracting Parties to the GFCM Agreement.
- (2) The General Fisheries Commission for the Mediterranean ('GFCM') adopts measures to ensure the long-term conservation and sustainable use of the fishery resources and the sustainable development of aquaculture in the GFCM Agreement area. Such measures may become binding upon the Union.
- (3) 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

¹ Council Decision of 16 June 1998 on the accession of the European Community to the General Fisheries Commission for the Mediterranean (OJ L190, 4.7.1998, p. 34).

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).

marine ecosystem and fishery resources. Besides, Regulation (EU) No 1380/2013 specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations.

- (4) 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.
- (5) 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.
- (6) 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.
- (7) As stated in the conclusions of the Ministerial Conference on the Sustainability of Mediterranean Fisheries, which adopted the Malta MedFish4Ever Ministerial Declaration on 30 March 2017 and of the High Level Conference on Black Sea Fisheries and Aquaculture, which adopted the Sofia Ministerial Declaration on 7 June 2018, the promotion of measures to support and enhance data collection and scientific evaluation, ecosystem based fisheries management, a culture of compliance to eliminate illegal, unreported and unregulated fishing, sustainable small scale fisheries and aquaculture, greater solidarity and coordination, is central to the Union's action in the GFCM.

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.

- (8) The GFCM 2030 Strategy for the sustainable fisheries and aquaculture in the Mediterranean and the Black Sea⁹, adopted in 2021, integrates and further develops the commitments and priorities of previous Ministerial Declarations, while focusing also on actions to better address increased challenges, such as climate change, non-indigenous species, pollution in all its forms and the need to reduce and mitigate discards and incidental catches of vulnerable species.
- (9) It is appropriate to establish the position to be taken on the Union's behalf in the meetings of the GFCM for the period 2024-2028, as the GFCM conservation and management measures may be binding on the Union and capable of decisively influencing the content of Union law, namely, Regulation (EU) 2017/2403 of the European Parliament and of the Council¹⁰, Council Regulation (EC) No 1005/2008¹¹ and Council Regulation (EC) No 1224/2009¹².
- (10) Currently, the position to be taken on the Union's behalf in the meetings of the GFCM is established by Council Decision (EU) 2019/869¹³. 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 GFCM Agreement area and the consequent 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 GFCM, procedures should be established for the year-to-year specification of the Union's position for the period 2024-2028. Those 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.

⁹ GFCM 2030 Strategy General Fisheries Commission for the Mediterranean – GFCM Food and Agriculture Organization of the United Nations | General Fisheries Commission for the Mediterranean (GFCM) | Food and Agriculture Organization of the United Nations (fao.org).

¹⁰ 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).

¹¹ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated 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).

¹² 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).

¹³ Council Decision (EU) 2019/869 of 14 May 2019 on the position to be taken on behalf of the European Union in the General Fisheries Commission for the Mediterranean (GFCM), and repealing the Decision of 19 May 2014 on the position to be adopted, on behalf of the Union, in the GFCM (OJ L 140, 28.5.2019, p. 84).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the meetings of the General Fisheries Commission for the Mediterranean (GFCM) 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 GFCM 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 for the annual meeting of the GFCM in 2029.

Article 4

Decision (EU) 2019/869 is repealed.

Article 5

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*