Council of the European Union

Brussels, 30 June 2021
(OR. en)

10209/21

Interinstitutional File: 2021/0177(NLE)

PECHE 235
UK 165

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	30 June 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 357 final
Subject:	Proposal for a COUNCIL REGULATION amending Regulations (EU) 2019/1919, (EU) 2021/91 and (EU) 2021/92 as regards certain fishing opportunities for 2021 in Union and non-Union waters

Delegations will find attached document COM(2021) 357 final.

Encl.: COM(2021) 357 final

EUROPEAN
COMMISSION

Brussels, 30.6.2021
COM(2021) 357 final

2021/0177 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulations (EU) 2019/1919, (EU) 2021/91 and (EU) 2021/92 as regards certain fishing opportunities for 2021 in Union and non-Union waters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Council Regulation (EU) No 2019/1919

The Sustainable Fisheries Partnership Agreement between the European Union and the Islamic Republic of Mauritania[1] establishes a framework for the legal, environmental, economic and social governance of fishing activities carried out by Union vessels in the waters under Mauritanian jurisdiction. The Protocol on the implementation of the Agreement[2] provides for fishing opportunities for Union vessels in seven categories.

The Protocol was extended by an Agreement in the form of an exchange of letters between the Union and Mauritania on 15 November 2020[3].

Council Regulation (EU) 2019/1919[4], which allocates the fishing opportunities under the Agreement between the EU Member States, currently still includes the United Kingdom of Great Britain and Northern Ireland (UK).

On 31 January 2021, the UK withdrew from the European Union on the basis of Article 50 of the Treaty on European Union. In the Withdrawal Agreement[5], a transition period was decided that ended on 31 December 2020. Union law has therefore not been applicable to the UK since 1 January 2021.

The fishing opportunities attributed to the UK should therefore be removed from Regulation (EU) 2019/1919 and reallocated as from 1 January 2021. This proposal amends the Regulation so as to redistribute the UK's fishing opportunities among the Member States benefiting from fishing opportunities in the same category in proportion to Member States' allocations. This allocation does not prejudge future allocations under the next Protocols. This proposal amends the Regulation so to withdraw the quarterly licences held by the UK.

---

1 Council Regulation (EC) No 1801/2006 of 30 November 2006 on the conclusion of the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania (OJ L 343, 8.12.2006, p. 1).

2 Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania for a period of four years (OJ L 315, 1.12.2015, p. 3).

3 Agreement in the form of an Exchange of Letters between the European Union and the Islamic Republic of Mauritania on an extension to the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania, expiring on 15 November 2020 (OJ L 383, 16.11.2020, p. 3).

4 Council Regulation (EU) 2019/1919 of 8 November 2019 on the allocation of the fishing opportunities under the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania (OJ L 297I, 18.11.2019, p. 5).

5 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7).

Provisional TACs under Article 499 TCA for fishing opportunities in 2021 and certain stocks in 2022 under Council Regulation (EU) No 2021/91 and Council Regulation (EU) No 2021/92

Since January 2021, the situation of the EU fishing industry has changed, including the applicable legal framework to the fisheries management of the EU and the UK for their respective regulatory areas. As signatories to the Trade and Cooperation Agreement[6] (TCA), and considering their potentially differing policy considerations and orientations, both the EU and the UK exercised their respective roles for the first time during lengthy, but eventually successful consultations, culminating in agreement on definitive TACs for 2021 and 2022 for certain stocks.

In the absence of an agreement with the UK on fishing opportunties as from the beginning of 2021, each Party applied provisional TACs under Article 499 TCA for stocks shared between the EU and the UK. In Council Regulation (EU) No 2021/91[7] and Council Regulation (EU) No 2021/92[8], the EU set provisional TACs applicable until 31 July 2021 for vessels fishing in EU, third country and international waters. Those provisional TACs aimed to ensure the continuation of sustainable EU fishing activities in view of the then ongoing EU-UK consultations.

Consultations with the UK on fishing opportunities under Article 498 TCA

The Union conducted consultations with the UK in accordance with the provisions of the TCA, with the objectives and principles set out in Articles 2, 3, 28 and 33 of the CFP Regulation[9] as well as Articles 4 and 5 of the Western Waters[10] and North Sea[11] multiannual plans (MAPs), and the Council Decision establishing the position to be taken on behalf of the

---

6 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 149, 30.4.2021, p. 10–2539.

7 Council Regulation (EU) 2021/91 of 28 January 2021 fixing, for the years 2021 and 2022, the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks (OJ L 31, 29.1.2021, p. 20–30).

8 Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, OJ L 31 of 29.1.2021, p. 31.

9 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 of 28.12.2013, p. 22.

10 Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008, OJ L 83 of 25.3.2019, p. 1.

11 Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008, OJ L 179 of 16.7.2018, p. 1.

Union in the consultations with the United Kingdom to agree on fishing opportunities for shared stocks for 2021 and, for certain deep-sea stocks, for 2021 and 2022[12].

Consultations were conducted by the Commission in full coordination with the Council. The PECH Committee of the European Parliament was involved through periodic information and update sessions.

When agreeing during the consultations to targeted and by-catch stocks TAC levels, the Commission based itself on the requirements of the TCA and the EU applicable legal framework. Similarly, when agreeing during the consultations to analytical and precautionary approach stocks, the Commission based itself on the best available scientific advice, in particular that of the International Council for the Exploration of the Sea (ICES).

On 2 June 2021, the Commission agreed in principle with the UK on the setting of a large number of TACs, pursuant to Articles 498(2), (4)(a) to (4)(d) and (6) of the TCA for 2021 (stocks listed in Annex 35 TCA). The agreement in principle was laid down in the Written Record, which was signed by the Heads of Delegation of the UK and by the Commission representative on behalf of the Union, on 11 June 2021 in accordance with Article 498(6) of the TCA. The Council endorsed the agreement on 11 June by Decision based on Council document 9512/21 PECHE 184/UK 145.

The conclusion of these consultations introduces agreed and ensured fishing opportunities for both the EU and the UK for 2021 (and for some deep-sea stocks for 2022), under access provisions that allow the vessels of each party to exploit these fishing opportunities in each other's waters.

In the absence of an agreed conclusion of the consultations and the associated compromises necessary in some specific cases, no agreed TACs would be in place. Unilateral TAC setting by the EU and the UK would have jeopardised both the sustainable management of these shared stocks and the level playing field for Union operators as referred to in the TCA and in Article 33 of the CFP.

It is therefore necessary to replace the provisional TACs that were established in Regulation (EU) 2021/91 and Regulation (EU) 2021/92 with definitive fishing opportunities in view of the written record agreed with the UK. Such fishing opportunities for 2021 (and for some deep-sea stocks for 2022) will allow for the conduct of fishing activities in an environmentally sustainable way in the long-term, managed in ways consistent with the objectives of achieving economic, social and employment benefits and contributing to the availability of food supplies, including promotion of a level playing field for Union operators where stocks are shared with third countries in both Union other (including third country waters).

The TACs for the stocks listed in Annex 35 to the TCA apply in 2021, whereas the TACs for certain deep-sea stocks cover the period 2021 and 2022.

---

[12] Council Decision establishing the position to be taken on behalf of the Union in the consultations with the United Kingdom to agree on fishing opportunities for shared stocks for 2021 and, for certain deep-sea stocks, for 2021 and 2022 of 5 March 2021, NO 6414/21.

Commission proposal to implement the Written Record agreed under Article 498 TCA to amend Council Regulation (EU) No 2021/91 and Council Regulation (EU) No 2021/92

In adopting its proposal for the implementation of the agreed Written Record for particular TAC levels, the Commission has considered various parameters, including: (i) the flexibilities provided under the CFP Regulation due to the implementation of the landing obligation; (ii) the need to address mixed fisheries considerations and choking situations; (iii) the possibilities for quota transfers both within the EU and with the UK; (iv) TAC deductions stemming from exemptions to the landing obligation; (v) the level of EU share in the stock in a particular geographical area; (vi) the fishing uptake of the stock in 2020; (vii) the need to ensure significant growth in the biomass of stocks below Blim; and (viii) the precautionary principle under Article 4(8) of the CFP.

Articles 15 to 17 of Council Regulation (EU) No 2021/92 established technical measures, including remedial measures within the meaning of the Western Waters MAP, that aimed at decreasing by-catches of cod and whiting in the Celtic Sea and adjacent areas and gadoids in the Irish Sea and West of Scotland. These measures were functionally linked to the TAC levels for target species caught in mixed fisheries, as, without those measures, such TAC levels would have had to be reduced to allow for the recovery of the by-catch stocks. Although no further technical measures were agreed with the UK in particular for fish stocks caught in mixed fisheries, such technical measures remain necessary to allow the setting of the TACs of target species at levels proposed in this Regulation. The Commission therefore proposes to maintain the technical measures functionally linked to the fishing opportunities established by Articles 15 to 17 of Council Regulation (EU) No 2021/92, that lead to higher selectivity in the fishing for the healthy targeted stocks without jeopardising the state of the unavoidable bycatch stocks in Union waters. Those measures shall apply until the date on which a delegated act adopted in accordance with Article 15(2) of Regulation (EU) 2019/1241[13] and amending Annex VI of that Regulation by introducing corresponding technical measures for the North Western Waters becomes applicable. The joint recommendation proposing the adoption of the corresponding technical measures by a delegated act and submitted by the Member States was positively assessed by STECF. In absence of any technical measures agreed with the UK, the measures proposed in that joint recommendation are not impacted by the Written Record, and they can be included in the delegated act currently under preparation.

Other provisions related to fishing opportunities for 2021

The proposal also addresses the outcome of the EU and the Faroe Islands annual consultations on exchanges for certain TACs and access to each Party's waters.

[13] Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005, OJ L 198 of 25.7.2019, p. 105.

The proposal also addresses the need to set definitive fishing opportunities for anchovy in the ICES areas 9 and 10, after the release of the scientific advice.

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

The measures proposed are designed in accordance with the objectives and the rules of the Common Fisheries Policy and are consistent with the Union's policy on sustainable development.

- **Consistency with other Union policies**

The measures proposed are consistent with other Union policies, in particular with the policies in the field of environment.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis of this proposal is Article 43(3) of the Treaty on the Functioning of the European Union.

The Union's obligations for sustainable exploitation of living aquatic resources arise from obligations set out in Article 2 of the CFP Regulation.

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under the Union exclusive competence as referred to in Article 3(1)(d) of the Treaty on the Functioning of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality**

The proposal complies with the proportionality principle for the following reason: the Common Fisheries Policy is a common policy. According to Article 43(3) of the Treaty Treaty on the Functioning of the European Union, it is incumbent upon the Council to adopt the measures on the fixing and allocation of fishing opportunities.

- **Choice of the instrument**

Proposed instrument: Regulation.

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

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

Council Regulation (EU) No 2019/1919

The amendment does not change the conditions for fishing laid down in the Agreement and the Implementation Protocol. Therefore, there is no need for an *ex post* evaluation, stakeholder consultation or impact assessment.

Council Regulation (EU) No 2021/91 and Council Regulation (EU) No 2021/92

Not applicable.

- **Stakeholder consultations**

The proposal takes into account the feedback from the stakeholders, Advisory Councils, the national administrations, fishermen organisations and non-governmental organisations. During consultations with the United Kingdom on the fishing opportunities, stakeholders (notably representatives of non-governmental organizations and of fishing industry organizations) were informed and consulted, and contacts with national administrations have been maintained through intensive coordination in the course of the consultations with the UK. Advisory Councils were informed periodically of progress in the consultations.

- **Collection and use of expertise**

The proposal is based on the scientific advice of ICES.

- **Impact assessment**

The proposal seeks to avoid short-term approaches in favour of long-term sustainability decisions including existing MAPs for fisheries management in the North Sea and the North-western waters. It also takes into account initiatives from stakeholders and Advisory Councils if they have been positively reviewed by ICES and/or STECF. Furthermore, the Commission's CFP reform proposal was duly developed on the basis of an impact assessment (SEC(2011)891) in the context of which the maximum sustainable yield (MSY) objective was analysed in depth. Its conclusions identify this objective as a necessary condition to achieve environmental, economic and social sustainability.

As regards stocks that are shared with third countries, this proposal essentially implements internationally agreed measures. Any elements relevant to assess possible impacts of the fishing opportunities are dealt with in the preparation and conduct phase of international negotiations in the framework of which the Union's fishing opportunities are agreed with third parties.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The proposed measures will have no budgetary implications.

5. OTHER ELEMENTS

Council Regulation (EU) No 2019/1919

The proposal does not change the conditions laid down in the Agreement and the Implementation Protocol.

Council Regulation (EU) No 2021/91 and Council Regulation (EU) No 2021/92

- Total allowable catches

In line with Article 498 TCA, the TACs and quotas agreed with the UK and documented in the Written Record correspond to the Union shares agreed under the TCA as set out in Annex 35 and Annex 36 TCA. Those TACs and quotas are based on the ICES advice for the year 2021 and, for deep-sea stocks, also for 2022, and are in line with the objectives and principles of the TCA Fisheries heading.

In line with the core conservation objective of the common fisheries policy as set out in Article 2(2) of the CFP Regulation and Article 3(1) of the Western Waters and North Sea MAPs, the Union agreed with the UK TACs for stocks with F_{MSY} advice (advice with levels of fishing opportunities expressing fishing pressure that delivers the maximum sustainable yield – 'MSY').

Four TACs for stocks with MSY assessment and zero catch advice TACs are set at levels to cater for unavoidable by-catches and for the avoidance of discarding in mixed fisheries situations with other species. Three of these stocks have agreed TAC levels at by-catch levels (cod Celtic Sea, cod West of Scotland, whiting Irish Sea), and one (herring Celtic Sea) is set as a monitoring/sentinel TAC following ICES indications for the level of such a TAC. For the three demersal stocks in this group, application of additional requirements under the multiannual plans has been ensured through the continued application of remedial (technical measures functionally linked to the fishing opportunities for the target stocks in these mixed fisheries. For three out of these four stocks, the biomass will grow under the agreed TACs. In addition, the outcomes of the consultations have ensured fishing opportunities for some related stocks in the mixed fisheries in the lower range of the F_{MSY} (e.g. in the Celtic Sea) with the aim to reduce overall pressure in the fisheries concerned.

The proposal lists 43 TACs for stocks with precautionary advice. The Union pursued agreement on these TACs, taking into account the corresponding ICES headline advice and the precautionary approach provided for in Article 2(2) of the CFP Regulation. While the majority of these TACs are agreed in line with, or below the ICES advice levels, a number of TACs were agreed at levels that avoid choking situations and cater for the specificities in mixed fisheries, as referred to in Article 4(5) of the MAPs. Moreover, some of the TACs levels were agreed in light of the socio-economic and stability objectives of the CFP.

For a very limited number of shared stocks, tuning of the EU position was needed in order to achieve an overall outcome that was considered necessary and desirable in terms of sustainability and socio-economic considerations, including the need to promote the level playing field.

In implementing the outcomes of the consultations with the UK into the EU legal framework, account should be taken for respect of Articles 2, 3, 28 and 33 CFP and the applicable provisions of the respective MAPs.

TACs that deviate by more than 20% from the previously established TAC level

At the time of the adoption of the Western Waters and North Sea MAPs, the Commission made a statement that, where it proposes setting TACs that deviate by more than 20% from the previously established TAC level, these cases will be listed in the explanatory

memorandum of the Commission proposal, providing, where appropriate, the underlying reasons for the TAC variations. In the context of the shared stocks with the UK, the Commission thereby provides such explanations for the main variations of the TACs included in this proposal.

TAC code	Name	2020 TAC (t)	2021 TAC (t)[14]	Percentage Change (rounded)	Justification
ARU/1/2.	Greater Silver Smelt (1,2)	90	59	-34%	Following scientific advice, in agreement with the UK
ARU/3A4-C	Greater Silver Smelt (North Sea)	1,234	809	-34%	Following scientific advice, in agreement the UK
BLI/03A-	Blue Ling (3a)	5	4	-30%	Following scientific advice, with limitations of interannual fluctuations and agreed with the UK
BLI/12INT-	Blue Ling (International 12)	137	96	-30 %	Following scientific advice, with limitations of interannual fluctuations and agreed with the UK
BSF/56712-	Black Scabbardfish (Western)	2,470	1,929	-22%	Based on scientific advice, reducing interannual fluctuations, and agreed with the UK
HAD/7X7A34	Haddock (Celtic Sea)	10,859	15,000	+ 38%	Set below the ICES MSY advice as part of Celtic Sea mixed fisheries considerations, and in agreement with the UK
NEP/*07U16	Nephrops (Porcupine Bank)	2,637	3,290	+ 24%	Following scientific advice, in agreement with the UK
NOP/2A3A4.	Norway Pout (North Sea)	72,500	128,300	+77%	Set below F_{MSY} in agreement with the UK. Strong fluctuations with last year justified as this is a short lived species.
PLE/7DE.	Plaice (English Channel)	9,154	11,920	+ 30%	Following scientific advice, in agreement with the UK
POK/56-14	Saithe (West of Scotland)	8,280	6,175	-25%	Following decision taken in EU-UK-NO consultations.
POL/07.	Pollack (7)	12,163	9,426	-23%	Based on scientific advice, with limitations of interannual

[14] As set out in the Written Record before TAC deductions resulting from exemptions under the Landing Obligation.

					fluctuations and agreed with the UK
POL/56-14	Pollack (West of Scotland)	238	184	-23%	Based on scientific advice, with limitations of interannual fluctuations, and agreed with the UK
PRA/2AC4-C	Northern Prawn (North Sea)	1,200	660	-45%	Based on scientific advice, with limitations of interannual fluctuations,and agreed with the UK
RJE/7FG.	Small-eyed Ray (7fg)	192	123	-36%	Following scientific advice, and agreed with the UK
RNG/8X14-	Roundnose Grena-dier (8,9,10,12,14)	2,281	1,545	-32%	Based on scientific advice, and agreed with the UK
SAN/2A3A4.	Sandeel (North Sea, All Banks)	228,837	92,500	-60%	Set below F_{MSY} advice in agreement with the UK. Strong fluctuations with last year justified as this is a short lived species.
SOL/07A.	Sole (Irish Sea)	457	768	+ 68%	Following scientific advice, and agreed with the UK
SOL/07E.	Sole (Western Channel)	1,478	1,925	+ 30%	Following scientific advice, and agreed with the UK
SOL/24-C.	Sole (North Sea)	17,535	21,361	+ 23%	Following scientific advice, and agreed with the UK
LIN/1/2.	Ling (1,2)	117	43	-63%	Following scientific adviceset by the UK

Inter-annual flexibility

The Commission agreed with the UK that the year-to-year flexibility does not apply to the following stocks: Cod, West of Scotland (COD/5BE6A); Whiting, West of Scotland (WHG/56-14); WHG/07A Whiting (Celtic Sea); and Plaice (PLE/7HJK). The Commission agreed with Norway that the year-to-year flexibility does not apply to the following stocks: Northern Prawn, Skagerrak PRA/03A and cod Kattegat COD/03AS.

Discard exemptions

Where there are differences between the Union and the UK on the exemptions to the landing obligation, it was agreed to make use of the exemptions applicable in the other Party's waters in respect of fishing activities carried out in those waters.

Quota exchanges

The Union also sought to facilitate quota exchanges with the UK, in view of the establishment of a quota exchange mechanism by the Specialised Committee on Fisheries envisaged under Article 498(8) TCA, as a contribution to stabilise the fishing activities and to facilitate

exchanges before the formal establishment of such a mechanism. It is appropriate to establish the procedure to carry out such exchanges.

Seabass

In respect of seabass, the following amendments need to be introduced: 1) the commercial trawl/seine flexibility will be reduced from a 520kg cap per two months to a 380kg cap per month within the 5% bass per trip limit; 2) bycatches of seabass in shore-based commercial netting are removed from the scope of the general seabass fishing prohibition. This exemption only applies to historic numbers of locally regulated beach nets set at pre-2017 levels. 3) commercial shore-based netting activities should not target seabass and are only allowed to land unavoidable bycatches.

Outcome of the EU-Faroe Islands consultations

In 2021, the EU and the Faroe Islands held annual consultations on exchanges for certain TACs and access to each Party's waters. The consultations did not result in an agreement between the Union and the Faroe Islands. A reserve for certain TACs had been kept on the Union side to provide for these exchanges. As a result, the relevant fishing opportunities tables and vessels licenses must therefore be amended accordingly.

The 1920 Treaty of Paris

As regards the fishing opportunities around the area of Svalbard, the Treaty of 9 February 1920 relating to Spitsbergen (Svalbard) ('the 1920 Treaty of Paris') grants equal and non-discriminatory access to resources for all Parties to that Treaty, including with respect to fishing. The view of the Union concerning that access has been set out on numerous occasions, the most recently in the note verbale to Norway No 02/21 dated 26 February 2021. In order to ensure that the exploitation of resources within the area of Svalbard is consistent with such non-discriminatory management rules as may be set out by Norway, which enjoys sovereignty and jurisdiction in the area within the limits of that Treaty, the Council fixed, for ICES subarea 1 and division 2b, the number of vessels that are authorised to conduct fishery for snow crab and quotas for cod. The allocation of such fishing opportunities among Member States is limited to 2021. In the note verbale to Norway No 02/21 dated 26 February 2021, the Union reserved its rights to take all appropriate remedial countermeasures to safeguard legitimate interests of the European Union and its Member States under the 1920 Treaty of Paris. It is also appropriate to recall that in the Union primary responsibility for ensuring compliance with applicable law lies with the flag Member States.

Anchovy in subareas 9 and 10

Anchovy (*Engraulis encrasicolus*) in ICES subareas 9 and 10 and in Union waters of CECAF 34.1.1 is a short-lived species, for which surveys are concluded in May. The TAC period is set from 1 July to 30 June of the following year. This ensures that the fishing opportunities are based on the best possible assessment of the annual recruitment of this short-lived species.

Council Regulation (EU) 2021/92, as initially adopted, set at zero the TAC for anchovy in ICES subareas 9 and 10 and in Union waters of CECAF 34.1.1 applicable from 1 July 2021 to 30 June 2022, awaiting the new scientific advice. In the third amendment to the 2021 fishing opportunities, a provisional TAC was established until 30 September 2021 to allow the

fishery to continue. The scientific advice was made available on 18 June 2021. The TAC for the period starting on 1 July 2021 should therefore be amended in line with the latest scientific advice from ICES.

2021/0177 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulations (EU) 2019/1919, (EU) 2021/91 and (EU) 2021/92 as regards certain fishing opportunities for 2021 in Union and non-Union waters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Council Regulation (EU) 2019/1919[15] allocates the fishing opportunities under the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania[16]. The Protocol was extended, until 15 November 2020, by the Agreement in the form of an Exchange of Letters on an extension, for a maximum period of one year, to the Protocol[17], signed by Council Decision (EU) 2019/1918[18] which authorised its provisional application.

(2) On 23 October 2020, the Council adopted Decision (EU) 2020/1704[19] on a second extension, for a maximum of one year, to the Protocol.

---

15 Council Regulation (EU) 2019/1919 of 8 November 2019 on the allocation of the fishing opportunities under the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania (OJ L 297 I of 18.11.2019, p.5).

16 Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania for a period of four years (OJ L 315, 1.12.2015, p. 3).

17 Agreement in the form of an Exchange of Letters between the European Union and the Islamic Republic of Mauritania on an extension to the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania, expiring on 15 November 2019 (OJ L 297I , 18.11.2019, p. 3).

18 Council Decision (EU) 2019/1918 of 8 November 2019 on the signing, on behalf of the European Union, and provisional application of the Agreement in the form of an Exchange of Letters between the European Union and the Islamic Republic of Mauritania on an extension to the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania, expiring on 15 November 2019 (OJ L 297 I, 18.11.2019, p. 1).

19 Council Decision (EU) 2020/1704 of 23 October 2020 on the signing, on behalf of the Union, and provisional application of the Agreement in the form of an Exchange of Letters between the European Union and the Islamic Republic of Mauritania on an extension to the Protocol setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania, expiring on 15 November 2020 (OJ L 383, 16.11.2020, p. 1).

(3) Article 1 of Council Regulation (EU) 2019/1919 allocates fishing opportunities to the United Kingdom of Great Britain and Northern Ireland in category 6 — Pelagic freezer trawlers.

(4) Pursuant to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the United Kingdom is not a Member State of the Union anymore since 1 February 2020 and the transition period provided for in that Agreement has ended on 31 December 2020. Therefore, the fishing opportunities allocated to the United Kingdom should be reallocated to the Member States as from 1 January 2021 and the UK should no longer hold a quarterly licence from 1 January 2021.

(5) This reallocation should be transparent and proportional to the original quota allocation.

(6) Council Regulation (EU) 2019/1919 should therefore be amended accordingly.

(7) Council Regulation (EU) 2021/91[20] establishes, for the years 2021 and 2022, the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks. Council Regulation (EU) 2021/92[21] establishes for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and, for Union fishing vessels, in certain non-Union waters. For stocks shared with the United Kingdom (UK), those Regulations set provisional total allowable catches (TACs) applicable until 31 July 2021 for vessels fishing in Union waters, international waters and waters of third countries.

(8) In accordance with Article 498(2), (4) and (6) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community and the UK (TCA)[22], the Union has held bilateral consultations with the United Kingdom and established the level of fishing opportunities for the stocks listed in Annex 35, and tables A and B of Annex 36 of the TCA and associated conditions for the year 2021, and for years 2021 and 2022 for certain deep-sea TACs. These consultations were conducted between 20 January 2021 and 2 June 2021, on the basis of the Council Decision on the position to be taken on behalf of the Union, of 5 March 2021[23]. The outcome of the consultations was documented in a Written Record, signed by the Head of Delegations of both the EU and the UK and endorsed by the Council on 11 June 2021. It is therefore necessary to replace the provisional TACs that were established in Council Regulations (EU) 2021/91 and (EU) 2021/92 by the fishing opportunities agreed with the UK, together with the new associated measures.

(9) The conclusion of these consultations introduces agreed and ensured fishing opportunities for the EU and the UK for 2021 (and for some deep-sea stocks for 2022), under the equal access provisions to each other's waters under the TCA. In absence

---

20 Council Regulation (EU) 2021/91 of 28 January 2021 fixing, for the years 2021 and 2022, the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks (OJ L 31, 29.1.2021, p. 20–30).

21 Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 31 of 29.1.2021, p. 31).

22 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 149, 30.4.2021, p. 10.

23 Council Decision establishing the position to be taken on behalf of the Union in the consultations with the United Kingdom to agree on fishing opportunities for shared stocks for 2021 and, for certain deep-sea stocks, for 2021 and 2022 of 5 March 2021, NO 6414/21

such agreement on fishing opportunities, TACs would be set unilaterally by the EU and the UK, putting at risk the sustainable management of these shared stocks. It would also jeopardize the level playing field for Union operators.

(10) It is now necessary to implement the outcomes of the EU-UK consultations into the EU legal order by amending the provisional TACs that were established in Council Regulations (EU) 2021/91 and (EU) 2021/92 by the fishing opportunities respecting the TAC levels agreed with the UK.

(11) Under the TCA, the EU and the UK share the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above biomass levels that can produce the maximum sustainable yield (MSY). In accordance with the CFP Regulation[24] and the Western Waters[25] and North Sea[26] multiannual plans (MAPs), the target fishing mortality in line with the ranges of MSY (F_{MSY}) defined in Article 2 of the CFP Regulation, was to be achieved as soon as possible, and on a progressive and incremental basis by 2020 for the stocks listed in Article 1(1) of that regulation and is to be maintained thereafter within the ranges of F_{MSY}, in accordance with Article 4 of that regulation.

(12) There are certain stocks for which ICES, while assessing them against MSY, has issued scientific advice for no catches. If TACs for those stocks are established at the level indicated in such scientific advice, the obligation to land all catches both in the EU and UK waters, including by-catches from those stocks, in mixed fisheries, would lead to the phenomenon of 'choke species'. In order to balance the need for continuation of these mixed fisheries in view of the potentially severe socio-economic implications on complete interruption of that fishery, and the need to achieve a good biological status for those stocks, and taking into account the difficulty of fishing all stocks in a mixed fishery at MSY at the same time, the EU and the UK agreed that it is appropriate to establish specific TACs for by-catches for those stocks. The level of those TACs should be such that mortality for those stocks is decreased and that it provides incentives for improvements in selectivity and avoidance. The levels of the fishing opportunities for these stocks should be established in line with the Written Record in order both to ensure a level playing field for Union operators and to provide for the significant recovery of the biomass of these stocks at the same time.

(13) While the EU and the UK did not reach agreement on aligned functionally linked technical measures, both agreed that such measures are necessary, and the UK will adopt such measures in order to contribute to the recovery of the stocks concerned. In the current absence of agreement, it is necessary to continue with the application of existing functionally linked technical measures established in Articles 15 to 17 of

---

24 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 of 28.12.2013, p. 22.

25 Regulation (EU) 2019/472 of the European Parliament and of the Council of 19 March 2019 establishing a multiannual plan for stocks fished in the Western Waters and adjacent waters, and for fisheries exploiting those stocks, amending Regulations (EU) 2016/1139 and (EU) 2018/973, and repealing Council Regulations (EC) No 811/2004, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007 and (EC) No 1300/2008, OJ L 83 of 25.3.2019, p. 1.

26 Regulation (EU) 2018/973 of the European Parliament and of the Council of 4 July 2018 establishing a multiannual plan for demersal stocks in the North Sea and the fisheries exploiting those stocks, specifying details of the implementation of the landing obligation in the North Sea and repealing Council Regulations (EC) No 676/2007 and (EC) No 1342/2008, OJ L 179 of 16.7.2018, p. 1.

Council Regulation 2021/92 that allow setting the TACs of target species at levels proposed in this Regulation without jeopardising the state of the unavoidable bycatch stocks in Union waters.

(14) Given that the biomass of the stocks of COD/5BE6A, WHG/56-14, WHG/07A and PLE/7HJK is below Blim and that only by-catch and scientific fisheries are permitted, the EU and the UK agreed in the Written Record that it is necessary not to apply Article 15(9) of Regulation (EU) No 1380/2013 in respect of these stocks for transfers from 2020 to 2021 so that catches in 2021 will not exceed the TAC established for those stocks.

(15) Given that the biomass of the stocks of COD/03AS, PRA/03A is below Blim, the EU and Norway agreed that it is necessary not to apply Article 15(9) of Regulation (EU) No 1380/2013 in respect of these stocks for transfers from 2020 to 2021 so that catches in 2021 will not exceed the TAC established for those stocks.

(16) European seabass in the Celtic Sea, Channel, Irish Sea and southern North Sea (ICES divisions 4b, 4c, 7a, and 7d to 7h) continues below MSY Btrigger and is just above Blim. While fishing mortality has decreased, ICES indications on the fishing pressure continue to be of concern. The importance of agreed measures to ensure aligned conditions and opportunities for the UK and for the EU fleets is key for sea bass as a shared stock, notably on a monthly cap for commercial trawl/sein fisheries, and on by-catches in shore-based commercial netting, keeping the existing limitation on recreational fishing in place. The EU and the UK also agreed to prioritise the improvement of the ICES assessment tool for seabass to allow for forecast calculations on the basis of MSY models.

(17) In pursuit of protection from fishing of the species concerned, the UK and the EU agreed in the Written Record on lists of prohibited species. Fishing for, retaining on board, transhipping, or landing of such prohibited species shall be prohibited.

(18) Pursuant to Article 498 of the TCA, the EU and the UK agreed to set up a mechanism for voluntary in-year transfers of fishing opportunities to take place each year and that the details for such a mechanism should be defined by the Specialised Committee on Fisheries. In order to allow Member States to transfer or exchange fishing opportunities with the UK pending the adoption by the Specialised Committee on Fisheries of these details, it is appropriate to establish the procedure to carry out such exchanges..

(19) In 2021, the Union and the Faroe Islands held annual consultations on exchanges for certain TACs and access to each Party's waters. The consultations did not result in an agreement between the Union and the Faroe Islands. A reserve for certain TACs had been kept on the Union side to provide for these exchanges. As a result, the relevant fishing opportunities tables and vessels licenses should therefore be amended accordingly.

(20) Council Regulation (EU) 2021/92, as initially adopted, set at zero the TAC for anchovy in ICES subareas 9 and 10 and in Union waters of CECAF 34.1.1 applicable from 1 July 2021 to 30 June 2022, awaiting the new scientific advice. In the third amendment to the 2021 fishing opportunities, a provisional TAC was established until 30 September 2021 to allow the fishery to continue. The scientific advice was issued on 18 June 2021. The TAC for the period starting on 1 July 2021 should therefore be amended in line with the latest scientific advice from ICES.

(21) Regulations (EU) 2021/91 and (EU) 2021/92 should therefore be amended accordingly.

(22) As regards the fishing opportunities around the area of Svalbard, the Treaty of 9 February 1920 relating to Spitsbergen (Svalbard) ('the 1920 Treaty of Paris') grants equal and non-discriminatory access to resources for all Parties to that Treaty, including with respect to fishing. The view of the Union concerning that access has been set out on numerous occasions, the most recently in the note verbale to Norway No 02/21 dated 26 February 2021. In order to ensure that the exploitation of resources within the area of Svalbard is consistent with such non-discriminatory management rules as may be set out by Norway, which enjoys sovereignty and jurisdiction in the area within the limits of that Treaty, the Council fixed, for ICES subarea 1 and division 2b, the number of vessels that are authorised to conduct fishery for snow crab and quotas for cod. The allocation of such fishing opportunities among Member States is limited to 2021. In the note verbale to Norway No 02/21 dated 26 February 2021, the Union reserved its rights to take all appropriate remedial countermeasures to safeguard legitimate interests of the European Union and its Member States under the 1920 Treaty of Paris. It is also appropriate to recall that in the Union primary responsibility for ensuring compliance with applicable law lies with the flag Member States.

(23) The catch limits provided for in Regulations (EU) 2019/1919 and (EU) 2021/91 and (EU) 2021/92 apply from 1 January 2021. The provisions introduced by this Regulation concerning catch limits should therefore also apply from that date. Such retroactive application does not affect the principles of legal certainty and protection of legitimate expectations, as the fishing opportunities concerned are increased or have not yet been exhausted. For reasons of urgency, this Regulation should enter into force immediately after its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(f) of the Regulation (EU) 2019/1919 is replaced by the following:

"(f) category 6 — Pelagic freezer trawlers:

Germany	13 038, 4 tonnes
France	2 714, 6 tonnes
Latvia	55 966, 6tonnes
Lithuania	59 837, 6 tonnes
Netherlands	64 976, 1 tonnes
Poland	27 106, 6 tonnes
Ireland	8 860, 1 tonnes

During the period of application of the extension of the Protocol, the following number of quarterly licences shall be held by Member States:

Germany	4
France	2
Latvia	20

Lithuania	22
Netherlands	16
Poland	8
Ireland	2

Member States shall inform the Commission if certain licences may be placed at the disposal of other Member States.

Within this category, a maximum of 19 vessels may be deployed in Mauritanian waters at any one time;".

Article 2

Amendment of Regulation (EU) 2021/91

Regulation (EU) 2021/91 is amended as follows:

(1) Article 8 is deleted;

(2) Part 2 of the Annex is amended in accordance with Part A of the Annex to this Regulation.

Article 3

Amendment of Regulation (EU) 2021/92

Regulation (EU) 2021/92 is amended as follows:

(1) Article 7 is deleted;

(2) Article 11 is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. The prohibition set out in paragraph 1 shall not apply to bycatches of seabass in shore-based commercial netting activities. This exemption applies to historic numbers of beach nets set at pre-2017 levels. Shore-based commercial netting activities shall not target seabass and only unavoidable bycatches of seabass may be landed.'

(b) Paragraph 2 is amended as follows:

(i) Point (a) is replaced by the following:

'(a) using demersal trawls (*), for unavoidable by-catches not exceeding 380 kilogrammes per month and 5 % of the weight of the total catches of marine organisms on board caught by that vessel per fishing trip.'

(*) All types of demersal trawls (OTB, OTT, PTB, TBB, TBN, TBS and TB).

(ii) Point (b) is replaced by the following:

'(b) using seines (*), for unavoidable by-catches not exceeding 380 kilogrammes per month and 5 % of the weight of the total catches of marine organisms on board caught by that vessel per fishing trip.'

(*) All types of seines (SSC, SDN, SPR, SV, SB and SX).'

(3) the following paragraph 1a is inserted after paragraph 1 of Article 13:

'1a. By way of derogation from paragraph 1(d), Article 3 of Regulation (EC) No 847/96 and Article 15(9) of Regulation (EU) No 1380/2013 shall not apply to the following stocks: Cod, Kattegat (COD/03AS); Cod, West of Scotland (COD/5BE6A); Whiting, West of Scotland (WHG/56-14); Whiting, Celtic Sea (WHG/07A); Northern Prawn, Skagerrak (PRA/03A); and Plaice, Celtic Sea (PLE/7HJK).'

(4) the following Article is inserted after Article 53:

'Article 53a
Quota transfers and exchanges with the United Kingdom

1. Any quota transfer or exchange between the European Union and the United Kingdom shall take place in accordance with paragraphs 2 to 4.

2. A Member State intending to transfer or exchange quotas with the United Kingdom may discuss with the United Kingdom an outline of the quota transfer or exchange.

3. Where the Commission endorses an outline of quota transfer or exchange referred to in paragraph 2 notified by the Member State concerned, the Commission shall express, without undue delay, the consent to be bound by such quota transfer or exchange. The Commission shall notify the United Kingdom and the Member States of the agreed quota transfer or exchange.

4. The quota received from or transferred to the United Kingdom under the agreed quota transfer or exchange shall be deemed to be quotas allocated to, or deducted from, the allocation of the Member State concerned, as of the moment that the quota transfer or exchange takes effect in accordance with paragraph 3. Such exchanges shall not change the existing distribution key for the purposes of allocating fishing opportunities among Member States in accordance with the principle of relative stability of fishing activities.

(5) Annex IA is amended in accordance with Part B of the Annex to this Regulation.

(6) Annex IB is amended in accordance with Part C of the Annex to this Regulation.

(7) Annex V is amended in accordance with part D of the Annex to this Regulation.

Article 4
Entry into force and application

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President