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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	29 June 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 353 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union, for the period 2021-2026, in the Specialised Committee on Fisheries established by the 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

Delegations will find attached document COM(2021) 353 final.

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2021/0174 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union, for the period 2021-2026, in the Specialised Committee on Fisheries established by the 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

EXPLANATORY MEMORANDUM

1. SUBJECT OF THE PROPOSAL

The proposal is for a Council decision establishing the position to be taken on the EU's behalf in the Specialised Committee on Fisheries established under Article 8(1)(q) of the 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[1] (Trade and Cooperation Agreement for the period 2021–2026. This position covers the tasks of the Specialised Committee on Fisheries that involve the adoption of acts having legal effects under the Trade and Cooperation Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-UK Trade and Cooperation Agreement

The Trade and Cooperation Agreement sets out preferential arrangements in areas such as trade in goods and in services, digital trade, intellectual property, public procurement, aviation and road transport, energy, fisheries, social security coordination, law enforcement and judicial cooperation in criminal matters, thematic cooperation and participation in Union programmes. Its provisions aim to ensure a level playing field and respect for fundamental rights. The Trade and Cooperation Agreement applied provisionally from 1 January 2021 and entered into force on 1 May 2021.

2.2. The Specialised Committee on Fisheries

Article 8(1)(q) of the Trade and Cooperation Agreement establishes the Specialised Committee on Fisheries. Article 508 of the Trade and Cooperation Agreement lists, in a non-exhaustive manner, the tasks and areas of competence of the Specialised Committee on Fisheries.

Under Article 8(4) of the Trade and Cooperation Agreement, the Specialised Committee on Fisheries in its area of competence has the power to:

- monitor and review the implementation and ensure the proper functioning of the Trade and Cooperation Agreement or any supplementing agreement;
- assist the Partnership Council in the performance of its tasks and, in particular, report to the Partnership Council and carry out any task assigned to them by it;
- adopt decisions, including amendments, and recommendations on all matters where this Agreement or any supplementing agreement so provides or for which the Partnership Council has delegated its powers to a Specialised Committee in accordance with point (f) of Article 7(4) of the Trade and Cooperation Agreement;
- discuss technical issues arising from the implementation of this Agreement or any supplementing agreement;
- provide a forum for the Parties to exchange information, discuss best practices and share implementation experience;
- establish, supervise, coordinate and dissolve working groups; and

[1] OJ L149, 30.4.2021, p. 10-2539.

- provide a forum for consultation in line with Article 738(7) of the Trade and Cooperation Agreement.

Under Article 8(10) of the Trade and Cooperation Agreement, and by derogation from Article 8(9) of the Trade and Cooperation Agreement, the Specialised Committee on Fisheries may adopt and subsequently amend its own rules that shall govern its work.

Under Article 508(1) of the Trade and Cooperation Agreement, the Specialised Committee on Fisheries may in particular:

- provide a forum for discussion and cooperation on sustainable fisheries management;
- consider developing multi-year conservation and management strategies as the basis for the setting of TACs and other management measures;
- develop multi-year strategies for the conservation and management of non-quota stocks;
- consider fisheries management and conservation measures, including emergency measures and measures to ensure selectivity of fishing;
- consider approaches for collecting data for science and fisheries management purposes, for sharing such data (including information relevant to monitoring, controlling and enforcing compliance), and for consulting scientific bodies on the best available scientific advice;
- consider measures to ensure compliance with the applicable rules, including joint control, monitoring and surveillance programmes and the exchange of data to facilitate monitoring uptake of fishing opportunities and control and enforcement;
- develop guidelines for the setting of provisional TACs for special stocks;
- make preparations for annual consultations;
- consider matters relating to the designation of ports for landings, including facilitating timely notification by the Parties of such designations and of any changes to those designations;
- establish timelines for notifying new fisheries management measures and for communicating the lists of vessels for which authorisations or licences to fish are sought, as well as the notice to the other Party before setting or amending total allowable catches (TACs) for the stocks listed in Annex 37 to the Trade and Cooperation Agreement;
- provide a forum for consultations on further specific access conditions for: (a) the fishing opportunities agreed; (b) any multi-year strategies for non-quota stocks; and (c) any technical and conservation measures and a forum for consultation on the issues addressed in Article 506(4) of the Trade and Cooperation Agreement;
- develop guidelines to support the practical application of access to waters (Article 500 of the Trade and Cooperation Agreement);
- develop a mechanism for voluntary in-year transfers of fishing opportunities between the Parties; and
- consider the application and implementation of Article 502 on specific access arrangements for the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man, and consider the application and implementation of Article 503 of the Trade

and Cooperation Agreement on notification periods for the importation and direct landing of fishery products.

2.3. The envisaged acts of the Specialised Committee on Fisheries

Under Article 508(2) of the Trade and Cooperation Agreement, the Specialised Committee on Fisheries may adopt acts or measures, including decisions and recommendations:

- recording matters agreed by the Parties following consultations under Article 498 of the Trade and Cooperation Agreement;
- on any of the matters referred to in points (b), (c), (d), (e), (f), (g), (i), (j), (l), (m) and (n) in paragraph 1 of Article 508 of the Trade and Cooperation Agreement;
- amending the list of pre-existing international obligations referred to in Article 496(2) of the Trade and Cooperation Agreement;
- on any other aspect of cooperation on sustainable fisheries management under the fisheries heading of the Trade and Cooperation Agreement; and
- on the modalities of a review under Article 510 of the Trade and Cooperation Agreement Trade and Cooperation Agreement.

The purpose of such measures will be to implement the fisheries heading of the Trade and Cooperation Agreement.

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

Pursuant to Article 218(9) of the Treaty on the Functioning of the European Union (TFEU), the Council shall adopt, on a proposal from the Commission, the position to be adopted on behalf of the Union in the Specialised Committee on Fisheries, on decisions adopted under Article 508(2) of the Trade and Cooperation Agreement.

Positions within the Specialised Committee on Fisheries should be established using a two-tier approach. First, a Council Decision should set out the guiding principles and orientations of the EU's position on a multi-annual basis. Second, for each meeting where the Specialised Committee on Fisheries may be called upon to adopt acts or measures having legal effects, the position should be supplemented by non-papers prepared by the Commission and discussed in the Council Working Party.

This proposal aims to set out the EU's position within the Specialised Committee on Fisheries. The proposal implements the principles and orientations of the common fisheries policy (CFP) as laid down in Regulation (EU) No 1380/2013, in particular its Articles 2, 28 and 33. It also implements the provisions of multi-annual plans as laid down in 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[2] and Regulation (EU) 2019/472 establishing a multiannual plan for stocks fished in the Western Waters[3].

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[2] 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, 16.7.2018, p. 1–13.

[3] 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

The proposal aligns with the objectives and principles established in Article 494 of the Trade and Cooperation Agreement and takes account of the specific characteristics of the fisheries heading in the Trade and Cooperation Agreement. It also incorporates the standard process for the in-year specifications of the EU's position to be taken in the Specialised Committee on Fisheries.

In line with Article 218(10) TFEU and Council Decision (EU) 2021/689[4], the European Parliament is to be immediately and fully informed of the activities of the Specialised Committee on Fisheries, subject to the necessary arrangements in order to preserve confidentiality. As a general rule, the Commission will provide the information to the European Parliament through the responsible parliamentary committee. Such information should include the briefing and debriefing before and after meetings of the Specialised Committee on Fisheries, as well as all documents pertaining to its meetings at the same time the Commission shares them with the Council.

These working modalities are to be based on the principle of mutual sincere cooperation between the Union institutions, as enshrined in Article 13(2) TEU.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the TFEU provides for a Council decision 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*.'

'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 Union legislature'[5].

4.1.2. Application to the present case

The Specialised Committee on Fisheries is a body set up by an international agreement, namely the Trade and Cooperation Agreement.

The measures adopted by the Specialised Committee on Fisheries may be binding on the Parties in accordance with Article 10 of the Trade and Cooperation Agreement, which provides that: 'The decisions adopted by the Partnership Council, or, as the case may be, by a Committee, shall be binding on the Parties and on all the bodies set up under this Agreement and under any supplementing agreement, including the arbitration tribunal referred to in Title I of Part 6. Recommendations shall have no binding force.'

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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, 25.3.2019, p. 1–17.

4 Council Decision (EU) 2021/689 of 29 April 2021 on the conclusion, on behalf of the Union, of the 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, and of the Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland concerning security procedures for exchanging and protecting classified information, OJ L 149, 30.4.2021, p. 2-9.

5 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.

Recommendations and other acts or measures adopted by the SCF, may be capable of decisively influencing the content of the legislation adopted by the Union legislature, even if they do not have a binding effect under international law.The acts or measures adopted by the Specialised Committee on Fisheries will not supplement or amend the institutional framework of the Trade and Cooperation 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 for which a position is taken on the Union's behalf. If it pursues two aims or has two components, and if one of those aims or components can be identified as the main one, meaning that 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.

For an envisaged act that pursues a number of objectives simultaneously, or that has several components that are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The main objective and content of the envisaged decision relate to fisheries. Regulation (EU) No 1380/2013 is the legal basis setting out the principles to be reflected in this position.

Therefore, the proposed Decision is based on Article 43 TFEU.

4.3. Conclusion

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

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on the position to be taken on behalf of the European Union, for the period 2021-2026, in the Specialised Committee on Fisheries established by the 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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

(1) On 29 April 2021, the Council adopted Decision (EU) 2021/689[6] on the conclusion of the 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[7] (the 'Trade and Cooperation Agreement'). The Trade Cooperation Agreement entered into force on 1 May 2021.

(2) Article 8(1)(q) of the Trade and Cooperation Agreement establishes the Specialised Committee on Fisheries. Its competences are set out in Article 8(4) of the TCA.

(3) Article 8(4)(f) of the Trade and Cooperation Agreement empowers the Specialised Committee on Fisheries to establish, supervise, coordinate and dissolve Working Groups.

(4) In accordance with Article 8(10) of the Trade and Cooperation Agreement, and by derogation from Article 8(9), the Specialised Committee on Fisheries may adopt and subsequently amend its own rules that shall govern its work.

(5) Article 508 of the Trade and Cooperation Agreement lists, in a non-exhaustive manner, the tasks and areas of competence of the Specialised Committee on Fisheries.

(6) The Specialised Committee on Fisheries is responsible for the adoption of measures, including decisions and recommendations, in support of the objectives of Article 494 of the Trade and Cooperation Agreement, in particular of cooperation with a view to ensuring that fishing activities for shared stocks in the Parties' waters are economically sustainable in the long-term and contribute to achieving economic and social benefits, while fully respecting the rights and obligations of independent coastal States as exercised by the Parties, and the objective of exploiting shared stocks at rates intended to maintain and progressively restore populations of harvested species above

[6] OJ L 149, 30.4.2021, p. 2.
[7] OJ L 149, 30.4.2021, p. 10.

biomass levels that can procude the maximum susainable yield. Such measures may become binding upon the Union.

(7) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[8] 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 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 marine ecosystem and fishery resources. 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.

(8) It is appropriate to establish the position to be taken on behalf of the Union in the meetings of the Specialised Committee on Fisheries, in regard of acts of the Specialised Committee on Fisheries that are binding on the Union or are capable of decisively influencing the content of Union law.

(9) The European Parliament is to be immediately and fully informed, as provided for in Article 218(10) TFEU, to allow it to exercise fully its prerogatives in accordance with the Treaties.

(10) In view of the evolving nature of fishery resources covered by the Trade and Cooperation Agreement and the consequent need for the position of the Union to take account of new developments, including new scientific and other relevant information presented before or during the meetings of the Specialised Committee on Fisheries, procedures should be established, in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on European Union, for the year-to-year specification of the Union position for the period 2021-2026,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the meetings of the Specialised Committee on Fisheries established by Article 8(1)(q) of the Trade and Cooperation Agreement, shall be set out in Annexes I and II.

Article 2

The specifications of the Union position to be taken in the meetings of the Specialised Committee on Fisheries referred to in Article 1 shall be set out in accordance with Annex III.

[8] 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).

Article 3

The Union position referred to in Article 1 shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, by 30 June 2026.

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President