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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	1 July 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 352 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic on a Decision on delineation and a Recommendation on the management of the North Atlantic Current and Evlanov Seamount Marine Protected Area (NACES MPA)

Delegations will find attached document COM(2021) 352 final.

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EUROPEAN
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Brussels, 30.6.2021
COM(2021) 352 final

2021/0173 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the Convention for the Protection of the Marine Environment of the North-East Atlantic on a Decision on delineation and a Recommendation on the management of the North Atlantic Current and Evlanov Seamount Marine Protected Area (NACES MPA)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the North-East Atlantic Marine Environment Protection Commission in connection with the envisaged adoption of a Decision on delineation and a Recommendation on the management of the North Atlantic Current and Evlanov Seamount Marine Protected Area (NACES MPA) within the Convention for the protection of the marine environment of the North-East Atlantic (the 'OSPAR Convention').

2. CONTEXT OF THE PROPOSAL

2.1. The OSPAR Convention

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

2.2. The OSPAR Commission

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

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

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

2.3. The envisaged acts of the OSPAR Commission

On 1st October 2021 during the ministerial segment of its annual meeting, the OSPAR Commission is to adopt a Decision on delineation and a Recommendation on the management of the NACES MPA ('the envisaged acts').

The envisaged OSPAR Decision on delineation establishes the NACES MPA by indicating the geographical coordinates (latitude/longitude) of its boundaries. The envisaged OSPAR Recommendation on the Management of the NACES MPA aims to guide OSPAR Contracting Parties in the adoption of measures to protect and conserve seabirds and the ecosystems including their biodiversity and processes that support those populations in line with the general and specific conservation objectives set out in the Annex of this Recommendation.

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[1] Council Decision 98/249/EC of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic (OJ L 104, 3.4.1998, p. 1)

The supporting scientific analyses, which have been completed to identify the importance of this area as a foraging site for seabirds, are presented in a comprehensive document published in December 2020[2]. If designated, the proposed MPA would be the largest MPA in the OSPAR network covering nearly 600,000km2 (an area the size of France), and would become the eighth collectively designated MPA in the area beyond national jurisdiction within the OSPAR maritime area.

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

The need for protection of the marine biodiversity and ecosystems, including in the maritime areas beyond national jurisdiction, has been recognised repeatedly. The Council Conclusions on the Commission Communication "EU biodiversity strategy for 2030 - Bringing nature back into our lives" adopted in October 2020, call for high ambition at the 15th Conference of the Parties to the Convention on Biological Diversity , welcome the objective of protecting a minimum of 30% of the EU's sea area, one third of which strictly protected, representing 10% of EU sea. They also emphasize that this is an objective to be reached by Member States collectively and recognise the urgent need to step up efforts to ensure the effective management of all protected areas, to define clear conservation objectives and measures, and to monitor and strengthen them appropriately. Moreover, they emphasize the importance of seeking synergies and co-benefits with biodiversity-related Multilateral Environmental Agreements, such as OSPAR, and to integrate biodiversity considerations and goals into relevant international and regional processes. In this context, they confirm the EU support for the conclusion of an ambitious legally binding international agreement on marine biological diversity of areas beyond national jurisdiction (BBNJ) under the United Nations Convention on the Law of the Seas (UNCLOS) in 2021. Finally, they reiterate EU support for the designation of three vast Marine Protected Areas in the Southern Ocean in the framework of the Commission for the Conservation of Antarctic Marine Living Resources.

In view of the OSPAR Ministerial next October, a Union position is necessary because the envisaged OSPAR Decision on delineation, which is going to be adopted together with the Recommendation on the management of the MPA, is a legally binding text. Even if the Recommendation would not be legally binding, it is proposed that the Union position covers both 'the envisaged acts' due to the fact that they are closely related. Since they will facilitate the implementation of EU international commitments and ambitions and improve the protection of the environment, it is proposed that the Union supports the adoption of the Decision and the Recommendation.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement*.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question.

[2] https://www.ospar.org/documents?v=43885

4.1.2. Application to the present case

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

The Decision which the OSPAR Commission is called upon to adopt, constitutes an act having legal effects, because all OSPAR Decisions are legally binding for the Contracting Parties, according to the OSPAR Convention (Article 13§2). Although Recommendations are not legally binding, in the present case, the OSPAR Recommendation on the Management of the NACES MPA is closely related to the OSPAR Decision on delineation and therefore, it is appropriate to cover them by the same position of the Union.

The envisaged acts do not supplement or amend the institutional framework of the OSPAR Convention.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to relate to protection of the environment

Therefore, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention for the Protection of the Marine Environment of the North-East Atlantic[3] ('the Convention'), to which the Union is a Contracting Party, entered into force on 25 March 1998.

(2) Pursuant to Article 10(3) of the Convention, the Commission established by Article 10(1) of the Convention ("the OSPAR Commission") may adopt Decisions and Recommendations in accordance with Article 13 of the Convention.

(3) The OSPAR Commission, during its 24th session/meeting on 1st October 2021, is to adopt a Decision on delineation and a Recommendation on the management of the North Atlantic Current and Evlanov Seamount Marine Protected Area ('NACES MPA').

(4) The envisaged Decision of the OSPAR Commission establishes the NACES MPA by indicating its boundaries.

(5) The envisaged Recommendation of the OSPAR Commission aims to guide Contracting Parties in their actions and in the adoption of measures to achieve the conservation objectives set out in the Annex to the Recommendation.

(6) There is a close link between the two envisaged OSPAR Commission acts and, therefore, it is appropriate to cover them by the same position of the Union.

(7) It is appropriate to establish the position to be taken on the Union's behalf in the OSPAR Commission, as the Decision to be taken by the latter will be binding on the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 24th session/meeting of the OSPAR Commission shall be to support the adoption of the Decision on delineation and the

[3] OJ L 104, 3.4.1998, p. 2

Recommendation on the management of the North Atlantic Current and Evlanov Seamount Marine Protected Area (NACES MPA).

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President