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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms. Martine DEPREZ, Director of the Registry
date of receipt:	7 September 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 488 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the framework of the Convention on Future Multilateral Co-operation in the North-East Atlantic Fisheries as regards the application for accession to that Convention submitted by the United Kingdom and repealing Council Decision (EU) 2019/510

Delegations will find attached document COM(2020) 488 final.

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2020/0243 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the framework of the Convention on Future Multilateral Co-operation in the North-East Atlantic Fisheries as regards the application for accession to that Convention submitted by the United Kingdom and repealing Council Decision (EU) 2019/510

EXPLANATORY MEMORANDUM

This proposal concerns the Decision establishing the position to be taken on the European Union's behalf in the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries ("the NEAFC Convention") in relation to the accession - in its own right during the transition period - of the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") to that Convention.

1. CONTEXT OF THE PROPOSAL

On 29 March 2017, the United Kingdom notified the European Council of its intention to withdraw from the European Union, pursuant to Article 50 of the Treaty on European Union.

The Union and the United Kingdom have negotiated a withdrawal agreement pursuant to Article 50 of the Treaty on European Union. The Withdrawal Agreement[1] (hereinafter "WA") entered into force on 1 February 2020, after having been agreed on 17 October 2019, together with the Political Declaration setting the framework of the future EU-UK partnership.

Article 127(1) WA provides for a transition period during which Union law will continue to be applicable to and in the United Kingdom, ("transition period"). The transition period ends on 31 December 2020. Article 129(1) WA provides that, during the transition period, the United Kingdom is bound by the obligations stemming from the international agreements concluded by the Union, by Member States acting on its behalf, or by the Union and its Member States acting jointly. Article 129(3) WA provides that, in accordance with the principle of sincere cooperation, the United Kingdom must refrain, during the transition period, from any action or initiative which is likely to be prejudicial to the Union's interests, in particular in the framework of any international organisations, agency, conference or forum of which the United Kingdom is a party in its own right.

The Union has informed its international partners of the specific arrangements foreseen in the WA under which, during a transition period, the United Kingdom will be treated as a Member State for the purposes of the international agreements concluded by the Union.

The principal objective of the NEAFC Convention is to "promote the conservation and optimum utilisation of the fishery resources of the North-East Atlantic area within a framework appropriate to the regime of extended coastal State jurisdiction over fisheries, and accordingly to encourage international cooperation and consultation with respect to these resources". The NEAFC Convention entered into force on 17 March 1982. The United Kingdom is Depositary for the NEAFC Convention.

The 1982 NEAFC Convention replaced the original North-East Atlantic Fisheries Convention of 1959, as the result of the withdrawal of the Member States of the European Union as individual members from the 1963 NEAFC organisation and the extension of States of fishery limits to 200 miles in 1977. The 1959 NEAFC Convention, in turn, had replaced the 1946 Convention for the Regulation of Meshes and Fishing Nets and the Size Limits of Fish.

The 1982 NEAFC Convention was amended in 2004 (adding dispute settlement procedures) and 2006 (bringing the NEAFC Convention in line with developments in international law and instruments). The 2004 and 2006 amendments have not gone through the full process of

[1] 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 C 384I, 12.11.2019, p. 1.

ratification in all Contracting Parties. Through the 2006 "London Declaration" it was agreed among Parties to apply the amendments on a voluntary basis until ratification has been finalised.

For the purposes of the NEAFC Convention, the Contracting Parties established a North-East Atlantic Fisheries Commission ("NEAFC"). NEAFC has legal personality and enjoys in its relations with other international organisations and in the territories of the Contracting Parties such legal capacity as may be necessary to perform its functions and achieve its ends.

There are five Contracting Parties, all coastal States in the NEAFC Convention Area: the European Union (EU), Denmark (with respect to Faeroe Islands and Greenland), Iceland, Norway and the Russian Federation. Flag States with a real interest in fisheries in the Northeast Atlantic can be granted a Co-operating non-Contracting Party status, allowing them to authorise vessels flying their flag to operate in the NEAFC Convention Area, agreeing to enforce NEAFC measures. There are at present six Co-operating non-Contracting Parties: Bahamas, Canada, Curaçao, Liberia, Panama and New Zealand.

The European Union is a Party to the NEAFC Convention[2] because its subject matter falls within the scope of the Common Fisheries Policy, for which the Union has exclusive competence. The Member States are covered by the NEAFC Convention pursuant to Union law.

The NEAFC is the competent organisation to adopt recommendations for management measures concerning fisheries beyond the areas under fisheries jurisdiction of the Contracting Parties (the Regulatory Area), and for areas under the fisheries jurisdiction of a Contracting Parties if the relevant Contracting Party requests this. Adopted recommendations become binding on the Contracting Parties unless a Contracting Party submits a timely objection to the recommendation.

According to the NEAFC Convention, any State (except a Member State of the European Union), may accede to the Convention at any time, provided that an application for accession of that State meets with the approval of three-fourths of all the Contracting Parties. The application is approved, if within 90 days from the date of notification three-fourths of the Contracting Parties have notified the Depositary of their approval of the application[3]. The Depositary shall notify the State applying for accession and all Contracting Parties of the result of the application. Accession shall be effected by the deposit of an instrument of accession with the Depositary and shall take effect on the date of its receipt.

On 8 January 2019, the United Kingdom submitted an application to accede to the NEAFC Convention as a Contracting Party. On the same date, the Depositary notified the European Commission thereof.

Council Decision (EU) 2019/510[4] established the Union's position to approve the application for accession of the United Kingdom to the NEAFC Convention and authorised the Commission to notify the Depositary of the NEAFC Convention of the Union's position only if the withdrawal of the United Kingdom from the Union took place without a withdrawal

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2 OJ L 227, 12.8.1981, p. 21.

3 Regarding the United Kingdom's application submitted on 8 January 2019, the 90-day period expires on 8 April 2019.

4 Council Decision (EU) 2019/510 of 25 March 2019 on the position to be taken on behalf of the European Union in the framework of the Convention on future multilateral cooperation in the North-East Atlantic fisheries as regards the application for accession to that Convention submitted by the United Kingdom, OJ L 85, 27.3.2019, p. 22.

agreement by the expiry of the notification period referred to in Article 20(4) of the NEAFC Convention.

The application for accession by the United Kingdom did not meet the required approval of three-fourths of all the Contracting Parties: the quorum of three-fourths of the Contracting Parties required to notify the Depositary of their approval of the application was not reached.

In accordance with Article 129(4) WA, during the transition period, the United Kingdom may negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union, provided those agreements do not enter into force or apply during the transition period, unless so authorised by the Union. Council Decision 2020/135[5] sets out the conditions and procedure for granting such authorisations.

By means of its letter of 3 April 2020, the United Kingdom notified the European Commission of its intention to express its consent to be bound in its own capacity during the transition period by the NEAFC Convention. Council Implementing Decision XXX[6] authorises the United Kingdom to express its consent to be bound, in its own capacity, by the NEAFC Convention as the conditions set out in Article 3(2) of Council Decision 2020/135 are fulfilled.

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

This Council Decision should enable the Commission to approve, on behalf of the Union, the accession of the United Kingdom to the NEAFC Convention, by the expiry of the notification period referred to in Article 20(4) of the NEAFC Convention.

A core objective of the common fisheries policy, as set out in Regulation (EU) No 1380/2013 of the European Parliament and of the Council[7] is "to ensure that fishing activities are environmentally, economically and socially sustainable and are managed consistently with the objectives of achieving economic, social and employment benefits, and of restoring and maintaining fish stocks above levels which can produce maximum sustainable yield and that they are contributing to the availability of food supplies".

It is in the interest of the Union that the United Kingdom cooperates in the management of the stocks of common interest in full compliance with the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982[8] ("UNCLOS") and the United Nations Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks of 4 August 1995[9] ("UNFSA"), or any other international agreement or norm of international law.

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5 Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of 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, OJ L 29, 31.1.2020, p. 1.

6 (OJ L xxx, xxx, p. xxx).

7 OJ L 354, 28.12.2013, p. 22.

8 United Nations Convention on the Law of the Sea, OJ L 179, 23.6.1998, p. 3.

9 Agreement on the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks - Declaration concerning the competence of the European Community - Interpretative declarations, OJ L 189, 3.7.1998, p. 17.

Pursuant to Articles 56, 63 and 116 of the UNCLOS, the United Kingdom has legitimate fishing interests within the Convention Area of the NEAFC Convention (high seas) and as a coastal State insofar as the waters under the exclusive economic zone of the United Kingdom fall within the Convention Area of the NEAFC Convention.

As provided in Article 63(2) of the UNCLOS and in Article 8 of the UNFSA, where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area must cooperate to agree upon the measures necessary for the conservation of these stocks in the adjacent area. This cooperation may be established in the framework of regional fisheries management organisations or, where regional fisheries management organizations have no competence for the stock in question, by means of ad hoc arrangements among the countries having an interest in the fishery.

The accession of the United Kingdom to the NEAFC Convention will allow the United Kingdom to cooperate on the necessary fishery management measures and to ensure that fishing activities are carried out without resulting in the stock(s) being exploited unsustainably.

In light of the legitimate fishing interests of the United Kingdom in the NEAFC Convention Area, the obligation of the United Kingdom to cooperate on the necessary fisheries management, and the need to ensure the binding character of the NEAFC Recommendations upon accession of the United Kingdom, the Commission recommends that the application by the United Kingdom is accepted.

It is proposed that the Commission be authorised to inform the Depositary of the NEAFC Convention of the Union position in favour of the United Kingdom's accession to the NEAFC Convention.

3. LEGAL BASIS

3.1. Procedural legal basis

3.1.1. 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. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[10].

[10] 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.

3.1.2. Application to the present case

Any State may accede to the NEAFC Convention at any time. The application is approved if within 90 days from the date of notification by the Depositary of the receipt of the application, three-fourths of all the Contracting Parties have notified the Depositary of their approval of the application by that date. The Depositary shall notify the State applying for accession and all Contracting Parties of the result of the application.

Accession is effected by the deposit of an instrument of accession with the Depositary and takes effect on the date of its receipt. The Depositary informs all Signatories and all acceding Parties of all instruments of ratification, acceptance, approval or accession deposited, and notifies Signatories of the date and the Parties in respect of which this Convention enters into force.

The accession of the United Kingdom, once effective, will be binding under international law in accordance with Article 24 of the NEAFC Convention and is capable of decisively influencing the content of EU legislation.

The envisaged act does not supplement or amend the institutional framework of the NEAFC Convention. Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

3.2. Substantive legal basis

3.2.1. 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 several aims or has several components and if one of those aims or components is identifiable as the main one, whereas the others are 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.

3.2.2. Application to the present case

The main objective and content of the envisaged act relate to the common fisheries policy.

Therefore, the substantive legal basis of the proposed decision is Article 43 TFEU.

3.3. Conclusion

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

2020/0243 (NLE)

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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 43, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries[1] ('the NEAFC Convention') was approved by Council Decision 81/608/EEC[2] and entered into force on 17 March 1982.

(2) The NEAFC Convention currently applies to the United Kingdom as a result of the Union being a Contracting Party to that Convention, while Article 20(4) of the NEAFC Convention excludes the accession of Member States of the Union.

(3) Pursuant to Article 20(4) of the NEAFC Convention, any State may accede to the NEAFC Convention provided that an application for accession of that State meets with the approval of three-fourths of all Contracting Parties to the Convention within 90 days from the date of notification by the Depositary of the receipt of the application.

(4) On 8 January 2019, the United Kingdom submitted an application to accede to the NEAFC Convention as a Contracting Party. On the same date, the Depositary notified the European Commission thereof.

(5) On 25 March 2019, the Council adopted Decision (EU) 2019/510[3] on the position to be taken on behalf of the European Union in the framework of the NEAFC Convention as regards the application for accession to that Convention submitted by the United Kingdom. That decision was favourable to the United Kingdom's accession

[1] OJ L 227, 12.8.1981, p. 22.

[2] Council Decision 81/608/EEC of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries (OJ L 227, 12.8.1981, p. 21).

[3] Council Decision (EU) 2019/510 of 25 March 2019 on the position to be taken on behalf of the European Union in the framework of the Convention on future multilateral cooperation in the North-East Atlantic fisheries as regards the application for accession to that Convention submitted by the United Kingdom (OJ L 85, 27.3.2019, p. 22).

to the NEAFC Convention and was adopted in order to anticipate the situation where the United Kingdom would leave the Union without a withdrawal agreement. Consequently, Decision 2019/510 only authorised the Commission to notify the Union's position in case not withdrawal agreement was concluded.

(6) Moreover, the application for accession by the United Kingdom did not meet the required approval of three-fourths of all the Contracting Parties: the quorum of three-fourths of the Contracting Parties required to notify the Depositary of their approval of the application was not reached.

(7) In accordance with Article 129(4) of 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, during the transition period, the United Kingdom may negotiate, sign and ratify international agreements entered into in its own capacity in the areas of exclusive competence of the Union, provided those agreements do not enter into force or apply during the transition period, unless so authorised by the Union. Council Decision 2020/135[4] sets out the conditions and procedure for granting such authorisations.

(8) By means of its letter of 3 April 2020, the United Kingdom notified the European Commission of its intention to express its consent to be bound in its own capacity during the transition period by the NEAFC Convention.

(9) Council Implementing Decision (EU) XXX[5] authorises the United Kingdom to express its consent to be bound, in its own capacity, by the NEAFC Convention as the conditions set out in Article 3(1) of Decision (EU) 2020/135 are fulfilled.

(10) Pursuant to Articles 56, 63 and 116 of United Nations Convention on the Law of the Sea (UNCLOS)[6], the United Kingdom has legitimate fishing interests within the Convention Area of the NEAFC Convention (high seas) as a coastal State, insofar as the waters under the exclusive economic zone of the United Kingdom fall within the Convention Area of the NEAFC Convention.

(11) In order to prevent unsustainable fisheries, it is in the interest of the Union that the United Kingdom cooperates in the management of the stocks of common interest in full compliance with the provisions of the UNCLOS and the United Nations Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks of 4 August 1995 (UNFSA)[7] or any other international agreement or norm of international law.

(12) As provided in Article 63(2) of the UNCLOS and in Article 8 of the UNFSA, where the same stock or stocks of associated species occur both within the exclusive

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4 Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of 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, (OJ L 29, 31.1.2020, p. 1).

5 Council Implementing Decision (EU) 2020/XXX of [date] on the authorisation of the United Kingdom to express its consent to be bound, in its own capacity, by certain international agreements entering into force or be applied during the transition period in the area of the Union's common fisheries policy (OJ L xxx, xxx, p. xxx).

6 OJ L 179, 23.6.1998, p. 3.

7 OJ L 189, 3.7.1998, p. 14.

economic zone and in an area beyond and adjacent to that zone, the coastal State and the States fishing for such stocks in the adjacent area must cooperate to agree upon the measures necessary for the conservation of those stocks in the adjacent area. Such cooperation may be established in the framework of regional fisheries management organisations. The accession of the United Kingdom to the NEAFC Convention will allow the United Kingdom to cooperate on the necessary fishery management measures, with a view to ensuring that fishing activities are carried out in a way that results in the sustainable exploitation of the stock or stocks concerned.

(13) That accession still before the expiry of the transition period will enable the United Kingdom to give full effect to the obligations emanating from the UNCLOS in respect of conservation and management measures taking effect as from the moment the transition period ends and Union law ceases to apply to it. It is therefore in the interest of the Union to approve the application for accession to the NEAFC Convention submitted by the United Kingdom by the expiry of the notification period referred to in Article 20(4) of the NEAFC Convention.

(14) In the interest of clarity and legal clarity, Decision (EU) 2019/510 should be repealed,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the framework of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries ('the NEAFC Convention') shall be to approve the application for accession of the United Kingdom to the NEAFC Convention.

2. The Commission shall be authorised to notify the Depositary of the NEAFC Convention of the Union's position by the expiry of the notification period referred to in Article 20(4) of the NEAFC Convention.

Article 2

Decision (EU) 2019/510 is repealed.

Article 3.

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President