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#### **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: 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

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**COUNCIL REGULATION (EU) 2021/...**

**of ...**

**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<sup>1</sup> 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<sup>2</sup> (the ‘Protocol’). The Protocol was extended until 15 November 2020 by the Agreement in the form of an Exchange of Letters<sup>3</sup> on an extension, for a maximum period of one year, to the Protocol. The signing of that Agreement was authorised by Council Decision (EU) 2019/1918<sup>4</sup>, which authorised its provisional application.

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<sup>1</sup> 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, 18.11.2019, p.5).

<sup>2</sup> 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).

<sup>3</sup> 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. 3).

<sup>4</sup> 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).

- (2) On 23 October 2020, the Council adopted Decision (EU) 2020/1704<sup>1</sup>, which provides for a second extension, for a maximum of one year, to the Protocol.
- (3) Article 1 of 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<sup>2</sup>, the United Kingdom is no longer a Member State of the Union since 1 February 2020 and the transition period provided for in that Agreement ended on 31 December 2020. Therefore, the fishing opportunities allocated to the United Kingdom (UK) should be reallocated to the Member States as from 1 January 2021 and the UK should no longer hold a quarterly licence as from 1 January 2021.

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<sup>1</sup> 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).

<sup>2</sup> OJ L 29, 31.1.2020, p.7.

- (5) That reallocation should be transparent and proportional to the original quota allocation.
- (6) Regulation (EU) 2019/1919 should therefore be amended accordingly.
- (7) Council Regulation (EU) 2021/91<sup>1</sup> 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<sup>2</sup> 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 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.

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<sup>1</sup> 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).

<sup>2</sup> 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).

- (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<sup>1</sup> (TCA), the Union has held bilateral consultations with the UK and established the level of fishing opportunities for the stocks listed in Annex 35 and in tables A and B of Annex 36 of the TCA, as well as associated conditions for the year 2021, and the level of fishing opportunities for certain deep-sea TACs, as well as associated conditions for years 2021 and 2022. Those consultations were conducted between 20 January 2021 and 2 June 2021 on the basis of the Council Decision of 5 March 2021<sup>2</sup>. The outcome of the consultations was documented in a written record, signed by the heads of delegations of both the Union 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 Regulations (EU) 2021/91 and (EU) 2021/92 by the fishing opportunities agreed with the UK, together with the new associated measures.

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<sup>1</sup> 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).

<sup>2</sup> 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, ST 6414/21.

- (9) The conclusion of those consultations introduces agreed and ensured fishing opportunities for the Union and the UK for 2021, as well as for certain deep-sea stocks for 2021 and 2022, under the provisions in the TCA on equal access to each other's waters.
- (10) It is now necessary to implement the outcomes of the consultations between the Union and the UK into the Union legal order by replacing the provisional TACs that were established in 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 Union 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 multiannual plans provided for in Regulations (EU) No 1380/2013<sup>1</sup>, (EU) 2019/472<sup>2</sup> and (EU) 2018/973<sup>3</sup> of the European Parliament and of the Council, the target fishing mortality in line with the ranges of MSY ( $F_{MSY}$ ) defined in Regulations (EU) 2019/472 and (EU) 2018/973 was to be achieved as soon as possible, and on a progressive and incremental basis by 2020 for the target stocks listed in those Regulations and is to be maintained thereafter within the ranges of  $F_{MSY}$ , in accordance with those Regulations.

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

- (12) There are certain stocks for which the International Council for Exploration of the Sea (ICES), while assessing them against MSY, has issued scientific advice for no catches. If TACs for those stocks were established at the level indicated in such scientific advice, the obligation to land all catches both in the Union 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 those mixed fisheries in view of the potentially severe socio-economic implications on complete interruption of those fisheries with 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 Union 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 those stocks should be established in line with the written record in order both to ensure a level playing field for Union operators as well as to provide for the significant recovery of the biomass of those stocks at the same time.

- (13) While the Union and the UK did not reach an 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 an agreement, it is necessary to continue, in Union waters, with the application of existing functionally linked technical measures established in Articles 15, 16 and 17 of Regulation (EU) 2021/92, which allow setting the TACs of target species at levels proposed in this Regulation without jeopardising the state of the unavoidable by-catch 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 the biomass limit reference point ( $B_{lim}$ ) and that only by-catch and scientific fisheries are permitted, the Union and the UK agreed in the written record that inter-annual flexibility is not to be applied, including under Article 15(9) of Regulation (EU) No 1380/2013 in respect of these stocks for transfers to 2021 so that catches in 2021 will not exceed the TAC established for those stocks. Therefore, Belgium, France, Germany, Ireland and the Netherlands have undertaken not to apply Article 15(9) of Regulation (EU) No 1380/2013 in respect of those stocks for transfers to 2021.

- (15) Given that the biomass of the stock of PRA/03A is below  $MSY B_{trigger}$ , the Union and Norway agreed that inter-annual flexibility is not to be applied, including under Article 15(9) of Regulation (EU) No 1380/2013 and under Articles 3 and 4 of Regulation (EC) No 847/96 in respect of this stock for transfers to 2021 so that catches in 2021 will not exceed the TAC established for this stock. Therefore, Denmark and Sweden have undertaken not to apply Article 15(9) of Regulation (EU) No 1380/2013 and Articles 3 and 4 of Regulation (EC) No 847/96 in respect of this stock for transfers to 2021.
- (16) Given that the biomass of the stocks of COD/2A3AX4, COD/03AN and COD/07D is below  $B_{lim}$ , the Union, the UK and Norway agreed that inter-annual flexibility is not to be applied, including under Article 15(9) of Regulation (EU) No 1380/2013 and under Articles 3 and 4 of Regulation (EC) No 847/96 in respect of these stocks for transfers to 2021 so that catches in 2021 will not exceed the TAC established for those stocks. Therefore, Belgium, Denmark, France, Germany, the Netherlands and Sweden have undertaken not to apply Article 15(9) of Regulation (EU) No 1380/2013 and Articles 3 and 4 of Regulation (EC) No 847/96 in respect of those stocks for transfers to 2021.

- (17) 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  $B_{\text{trigger}}$  and is just above  $B_{\text{lim}}$ . 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 Union fleets is key for seabass as a shared stock, notably on a monthly cap for commercial fisheries with trawl and seine, and on by-catches in shore-based commercial netting, keeping the existing limitation on recreational fishing in place. The Union 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.
- (18) In pursuit of protection from fishing of the species concerned, the UK and the Union agreed in the written record on lists of prohibited species. Fishing for, retaining on board, transshipping, or landing of such prohibited species are to be prohibited.
- (19) Pursuant to Article 498(8) of the TCA, the Union 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 are to 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 those details, it is appropriate to establish the procedure to carry out such transfers or exchanges.

- (20) 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 those exchanges. As a result, the relevant fishing opportunities tables and vessels licenses should be amended accordingly.
- (21) 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 new scientific advice. In the third amendment to the 2021 fishing opportunities, a provisional TAC was established until 30 September 2021 to allow anchovy fishery to continue. ICES issued the scientific advice 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.
- (22) Regulations (EU) 2021/91 and (EU) 2021/92 should therefore be amended accordingly.

(23) 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, most recently in the notes verbales to Norway No 02/21 dated 26 February 2021 and No 08/21 dated 28 June 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 applicable until 31 December 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 rights and interests of the Union. It is also appropriate to recall that in the Union, primary responsibility for ensuring compliance with applicable law lies with the flag Member States.

(24) The catch limits provided for in Regulations (EU) 2019/1919 and (EU) 2021/91 apply as from 1 January 2021. The provisions introduced by this Regulation concerning catch limits should therefore also apply from that date, with the exception of the provisions concerning anchovy in ICES subareas 9 and 10 and in Union waters of CECAF 34.1.1, which should apply as from 1 July 2021, and of Article 3(2) point (c), as regards new paragraphs 2a and 2b of Article 11 of Regulation (EU) 2021/92, which should apply as from 1 August 2021. The catch limits provided for in Regulation (EU) 2019/1919 apply for the second period of application of the extension of the Protocol, namely from 16 November 2020. The UK has not made use of those fishing opportunities and is no longer entitled to do so as of 1 January 2021. The amendment of those fishing opportunities under that Regulation should therefore apply from 1 January 2021. 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*  
*Amendment of Regulation (EU) 2019/1919*

Article 1(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 can 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 is inserted:
    - ‘1a. The prohibition set out in paragraph 1 shall not apply to by-catches 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 by-catches of seabass may be landed.’;

- (b) in paragraph 2, points (c) and (d) and the final subparagraph are deleted;
- (c) the following paragraphs are inserted:
  - ‘2a. By way of derogation from paragraph 1, from 1 August to 31 December, Union fishing vessels in ICES divisions 4b, 4c, 7d, 7e, 7f and 7h may fish for European seabass, and retain, tranship, relocate or land European seabass caught in that area with the following gear and within the following limits:
    - (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;
    - (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;
  - 2b. Notwithstanding paragraphs 2 and 2a, catches referred to in points (a) and (b) of those paragraphs shall not exceed 760 kilogrammes for the period from 1 July to 31 August.

2c. By way of derogation from paragraph 1, in January 2021 and from 1 April to 31 December, Union fishing vessels in ICES divisions 4b, 4c, 7d, 7e, 7f and 7h may fish for European seabass, and retain, tranship, relocate or land European seabass caught in that area with the following gear and within the following limits:

- (a) using hooks and lines (\*\*\*) , not exceeding 5,7 tonnes per vessel;
- (b) using fixed gillnets (\*\*\*\*), for unavoidable by-catches not exceeding 1,4 tonnes per vessel.

The derogations set out in the first subparagraph shall apply to Union fishing vessels that have recorded catches of European seabass over the period from 1 July 2015 to 30 September 2016: in point (a) with recorded catches using hooks and lines, and in point (b) with recorded catches using fixed gillnets. In the case of a replacement of a Union fishing vessel, Member States may allow the derogation to apply to another fishing vessel provided that the number of Union fishing vessels subject to the derogation and their overall fishing capacity do not increase.

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- (\*) All types of demersal trawls (OTB, OTT, PTB, TBB, TBN, TBS and TB).
  - (\*\*) All types of seines (SSC, SDN, SPR, SV, SB and SX).
  - (\*\*\*) All long lines or pole and line or rod and line fisheries (LHP, LHM, LLD, LL, LTL, LX and LLS).
  - (\*\*\*\*) All fixed gillnets and traps (GTR, GNS, GNC, FYK, FPN and FIX).’;

- (d) paragraph 5 is amended as follows:
- (i) in point (a), “from 1 January to 28 February” is replaced by “from 1 January to 28 February and from 1 December to 31 December 2021”;
  - (ii) in point (b), “from 1 March to 31 July” is replaced by “from 1 March to 30 November”.
- (3) in Article 15(1), ‘Union vessels fishing with bottom trawls and seines in ICES divisions 7f and 7g’ is replaced by ‘Union vessels fishing with bottom trawls and seines in Union waters of ICES division 7g’.
- (4) the following Article is inserted:
- ‘Article 53a*  
*Quota transfers and exchanges with the United Kingdom*
- 1. Any quota transfer or exchange between the 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 has been notified 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 II is amended in accordance with Part D of the Annex to this Regulation.
  - (8) Annex V is amended in accordance with Part E 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, with the exception of the provisions concerning anchovy in ICES subareas 9 and 10 and in Union waters of CECAF 34.1.1, which shall apply as from 1 July 2021, and of Article 3(2) point (c), as regards new paragraphs 2a and 2b of Article 11 of Regulation (EU) 2021/92, which shall apply as from 1 August 2021.

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

Done at ...,

*For the Council*  
*The President*

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