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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms. Martine DEPREZ, Director of the Registry
date of receipt:	28 September 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the framework of the Convention for the Conservation of Salmon in the North Atlantic Ocean as regards the application for accession to that Convention submitted by the United Kingdom and repealing Decision (EU) 2019/937

Delegations will find attached document COM(2020) 626 final.

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COM(2020) 626 final

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the framework of the Convention for the Conservation of Salmon in the North Atlantic Ocean as regards the application for accession to that Convention submitted by the United Kingdom and repealing Decision (EU) 2019/937

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision setting out the position to be taken on the European Union's behalf in the body established by the Convention for the Conservation of Salmon in the North Atlantic Ocean[1] ("the NASCO Convention") on 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.

2. 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[2] entered into force on 1 February 2020, after having been agreed on 17 October 2019, together with the Political Declaration outlining the framework of the future EU-UK partnership.

Article 127(1) of the Withdrawal Agreement provides for a 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) of the Withdrawal Agreement 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) of the Withdrawal Agreement 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 set out in the Withdrawal Agreement. The Agreement states that, during the transition period, the United Kingdom will be treated as a Member State for the purposes of the international agreements concluded by the Union.

The NASCO Convention currently applies to the United Kingdom as a result of the Union being a contracting party to this Convention. This will end on the date the United Kingdom is no longer covered by the NASCO Convention as a Member State of the Union.

The principal objective of the NASCO Convention is "to contribute through consultation and co-operation to the conservation, restoration, enhancement and rational management of salmon stocks, taking into account the best scientific evidence available to it." The NASCO Convention entered into force on 1 October 1983. The Council of the European Union is the depositary for the NASCO Convention.

In its letter of 28 February 2019, the United Kingdom submitted an application to the President of the NASCO council, requesting an approval of its accession to the NASCO

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1 *OJ L 378, 31.12.1982, p. 24.*

2 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.

Convention. On 11 March 2019, the NASCO Secretariat notified all parties to the Convention, including the European Commission, thereof. In accordance with Article 17 of the NASCO Convention, prior approval of the NASCO council is needed for the accession of the United Kingdom to be considered valid.

The United Kingdom has clarified that its application was submitted as part of contingency planning in the absence of a withdrawal agreement. In its application, the United Kingdom specified that "[i]n the event that the Withdrawal Agreement is signed, ratified and approved […] the United Kingdom will refrain from depositing its instrument of accession to bring about membership of NASCO in its own right with effect from the point of its withdrawal from the European Union."

On 27 May 2019, the Council adopted Decision (EU) 2019/937[3] on the position to be taken on behalf of the European Union in the framework of the NASCO 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 to the NASCO Convention, but the approval was to be given from the moment Union law would cease to apply to the United Kingdom.

In accordance with Article 129(4) of the Withdrawal Agreement, 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.

By letter dated 3 April 2020, the United Kingdom notified the European Commission of its intention to express its consent, in its own capacity, to be bound by the NASCO Convention.

On 9 July 2020, the Secretariat received an email from the Council of the European Union (the depositary to the NASCO Convention) attaching an application by the United Kingdom to accede to the NASCO Convention and a letter to the President of NASCO. This was circulated on 24 July 2020. The letter to the President states that *'The United Kingdom intends to accede to the Convention in a manner consistent with its obligations under the Withdrawal Agreement…'* .

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

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3 Council Decision (EU) 2019/937 of 27 May 2019 on the position to be taken on behalf of the European Union in the framework of the Convention for the Conservation of Salmon in the North Atlantic Ocean as regards the application for accession to that Convention submitted by the United Kingdom, *OJ L 149, 7.6.2019, p. 61.*

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).

2.1. The North Atlantic Salmon Conservation Organisation

The North Atlantic Salmon Conservation Organisation is an international organisation established under the NASCO Convention. It was established taking direct account of the specific provisions on anadromous fish stocks of fish set out in Article 66 of the United Nation Convention on the Law of the Sea of 10 December 1982 ("UNCLOS")[6].

The Convention applies to the wild salmon stocks that migrate beyond areas of fisheries jurisdiction of coastal States of the Atlantic Ocean north of 36°N latitude throughout their migratory range.

NASCO is therefore responsible for regulating the fishing of wild salmon at sea throughout the North Atlantic. It also handles questions regarding the conservation of wild salmon stocks. In a broader context, NASCO also considers further measures applicable in waters under the jurisdiction of the contracting parties as needed to ensure the survival of wild Atlantic salmon.

NASCO has legal personality and, in its relations with other international organisations and in the territories of the contracting parties, it has the legal capacity necessary to perform its functions and achieve its goals.

2.2. The NASCO

NASCO consists of a council, three regional Commissions (the North American Commission, the North-East Atlantic Commission and the West Greenland Commission) and a Secretariat. The council has representatives from all Contracting Parties to the Convention: Canada, Denmark (in respect of the Faroe Islands & Greenland), the European Union, Norway, the Russian Federation and the United States of America. France (in respect of St. Pierre & Miquelon) attends NASCO's meetings as an observer.

The European Union is a Party to the NASCO Convention 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 NASCO Convention under Union law.

The European Union is a full member of both the North-East Atlantic Commission and the West Greenland Commission. In the North American Commission, the European Union has the right to submit and vote on proposals for regulatory measures on wild salmon stocks originating in Union territories. For this purpose, the Union is deemed to be a member of this commission insofar as the consideration of such proposals is concerned.

2.3. The envisaged act of the NASCO

The NASCO Convention is open for accession, subject to the approval of the NASCO council, by any State that exercises fisheries jurisdiction in the North Atlantic Ocean or is a State of origin for salmon stocks.

In its letter of 28 February 2019, the United Kingdom submitted an application to the President of the NASCO council, requesting approval to accede to the NASCO Convention. On 11 March 2019, the NASCO secretariat notified all parties to the Convention, including the European Commission, of this request. Under Article 17 of the NASCO Convention, prior approval of the NASCO council is needed for the accession of the United Kingdom to be considered valid.

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

Decisions of the NASCO council are to be taken by a three-quarters majority of the votes of the members present that cast an affirmative or negative vote. A vote can only be held if two thirds of the members of the council are present.

Instruments of approval or accession are to be deposited with the depositary. For each party acceding to the NASCO Convention, after the deposit of the requisite instruments of ratification, approval or accession, the Convention enters into force on the date of deposit of the instrument of accession.

3. POSITION TO BE TAKEN ON BEHALF OF THE UNION

The purpose of this Council Decision is to enable the Commission to approve, on behalf of the Union, the accession of the United Kingdom to the NASCO 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 salmon stocks, in full compliance with UNCLOS provisions, with the United Nations Agreement for the implementation 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[8] ("UNFSA"), and with any other international agreement or norm under international law.

Under Article 66 of UNCLOS, states in whose rivers anadromous stocks originate have the primary interest in and responsibility for these stocks. The State of origin of anadromous stocks must ensure their conservation by taking appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, that State must cooperate with the State of origin for the purpose of stock conservation and management.

The State of origin of anadromous stocks and other States fishing these stocks must make arrangements to implement Article 66 of UNCLOS. Such cooperation may be established in the framework of regional fisheries management organisations.

The United Kingdom, as a State of origin and as a State exercising fisheries jurisdiction has legitimate interests within the NASCO Convention Area insofar as the waters under the exclusive economic zone of the United Kingdom and the adjacent high seas fall within the NASCO Convention Area.

The accession of the United Kingdom to the NASCO Convention will enable the United Kingdom to cooperate on salmon management and conservation measures with due regard to

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7 *OJ L 354, 28.12.2013, p. 22.*

8 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.

the rights, interests and duties of other countries and the European Union, and to ensure that fishing activities do not result in the stock(s) being exploited unsustainably.

In light of the legitimate fishing interests of the United Kingdom in the NASCO Convention Area, the obligation of the United Kingdom to cooperate on fisheries management, and the need to ensure the binding character of NASCO decisions upon accession of the United Kingdom, the Commission recommends approving the United Kingdom's application.

It is proposed that the Commission be authorised to inform the President of the NASCO council of the Union position in favour of the United Kingdom's accession from the moment Union law ceases to apply to the United Kingdom and to cast its vote along these lines in the context of the NASCO council when voting on the membership of the United Kingdom.

It is appropriate to repeal Decision (EU) 2019/937 in order that the Union's approval to accede can be given before the end of the transition period.

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. 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*'[9].

4.1.2. Application to the present case

The NASCO Convention is open for accession, subject to the approval of the NASCO council, by any State that exercises fisheries jurisdiction in the North Atlantic Ocean or is a State of origin for salmon stocks.

Decisions of the NASCO council are to be taken by a three-quarters majority of the votes of the members present and casting an affirmative or negative vote. A vote can only be taken unless two thirds of the members of the NASCO council are present.

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 the instruments of approval or accession deposited, and notifies them of the date and the Parties in respect of which this Convention enters into force.

[9] 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.

The accession of the United Kingdom, once effective, will be binding under international law in accordance with Article 17(3) of the NASCO 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 NASCO 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 act on which a position is taken on the Union's behalf. If the 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.

4.2.2. 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.

4.3. Conclusion

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Convention for the Conservation of Salmon in the North Atlantic Ocean[1] ('the NASCO Convention') was approved by Council Decision 82/886/EEC[2] and entered into force on 1 October 1983.

(2) The NASCO Convention currently applies to the United Kingdom as a result of the Union being a Contracting Party to that Convention.

(3) Under Article 17(3) of the NASCO Convention, the Convention is open for accession, subject to the approval of the council of the North Atlantic Salmon Conservation Organisation established by the NASCO Convention, by any State that exercises fisheries jurisdiction in the North Atlantic Ocean or is a State of origin for salmon stocks.

(4) On 27 May 2019, the Council adopted Decision (EU) 2019/937[3] on the position to be taken on behalf of the European Union in the framework of the NASCO Convention as regards the United Kingdom's application to accede to the Convention. That decision was favourable to the United Kingdom's accession to the NASCO Convention, but the approval was to be given from the moment Union law would cease to apply to the United Kingdom.

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1 OJ L 378, 31.12.1982, p. 25.

2 Council Decision 82/886/EEC of 13 December 1982 concerning the conclusion of the Convention for the Conservation of Salmon in the North Atlantic Ocean (OJ L 378 , 31.12.1982, p. 24).

3 Council Decision (EU) 2019/937 of 27 May 2019 on the position to be taken on behalf of the European Union in the framework of the Convention for the Conservation of Salmon in the North Atlantic Ocean as regards the application for accession to that Convention submitted by the United Kingdom, *OJ L 149, 7.6.2019, p. 61.*

(5) 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 (EU) 2020/135[4] sets out the conditions and procedure for granting such authorisations.

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

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

(8) Under Article 66 of the United Nations Convention on the Law of the Sea ('UNCLOS')[6], States in whose rivers anadromous stocks originate have the primary interest in and responsibility for such stocks. The State of origin of anadromous stocks must ensure their conservation by taking appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone. In cases where anadromous stocks migrate into or through the waters landward of the outer limits of the exclusive economic zone of a State other than the State of origin, the State must cooperate with the State of origin for the purpose of stock conservation and management.

(9) To prevent unsustainable fishing, it is in the interest of the Union that the United Kingdom cooperates in the management of salmon stocks in full compliance with the UNCLOS provisions, 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] and with any other international agreement or norm under international law.

(10) As provided in Article 66 of the UNCLOS, the State of origin of anadromous stocks and other States fishing these stocks must make arrangements to implement that Article. Such cooperation may be established in the framework of regional fisheries management organisations.

(11) The accession of the United Kingdom to the NASCO Convention will the United Kingdom to cooperate on the necessary conservation and management measures with due regard to the rights, interests and duties of other countries and the Union, and to

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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.

ensure that fishing activities are carried out in a way that results in the sustainable exploitation of the salmon stocks concerned.

(12) The accession of the United Kingdom 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 submitted by the United Kingdom to accede to the NASCO Convention.

(13) In the interest of clarity and legal certainty, Decision (EU) 2019/937 should be repealed,

HAS ADOPTED THIS DECISION:

Article 1

1. The position to be taken on the Union's behalf in the council of the North Atlantic Salmon Conservation Organisation ('the NASCO council') established by the Convention for the Conservation of Salmon in the North Atlantic Ocean ('the NASCO Convention') shall be to approve the application for accession of the United Kingdom to that Convention.

2. The Commission shall be authorised to vote in the NASCO council on the accession of the United Kingdom to the NASCO Convention and on the United Kingdom's membership of the the West Greenland Commission and of the North-East Atlantic Commission.

Article 2

Decision (EU) 2019/937 is repealed.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President