Council of the European Union

Brussels, 11 July 2023
(OR. en)

11587/23

**Interinstitutional File: 2023/0269(NLE)**

PECHE 279

**PROPOSAL**

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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 11 July 2023 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2023) 408 final |
| Subject: | Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the Fishery Committee for the Eastern Central Atlantic and repealing Decision (EU) 2019/1570 |

Delegations will find attached document COM(2023) 408 final.

Encl.: COM(2023) 408 final

EUROPEAN
COMMISSION

Brussels, 11.7.2023
COM(2023) 408 final

2023/0269 (NLE)

Proposal for a

# COUNCIL DECISION

**on the position to be taken on behalf of the European Union in the Fishery Committee for the Eastern Central Atlantic and repealing Decision (EU) 2019/1570**

# EXPLANATORY MEMORANDUM

## 1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a Decision establishing the position to be taken on the behalf of the European Union in the sessions of the Fishery Committee for the Eastern Central Atlantic (CECAF) in 2024-2028 on the planned adoption of non-binding observations and measures regarding the management of living marine resources.

## 2. CONTEXT OF THE PROPOSAL

### 2.1. Food and Agriculture Organization of the United Nations

The Fishery Committee for the Eastern Central Atlantic (CECAF) was established by Resolution 1/48 of the Council of the Food and Agriculture Organization (FAO) of the United Nations under Article VI (2) of the FAO Constitution. The CECAF's statutes were promulgated by the FAO Director-General on 19 September 1967 and were last amended in 2003, particularly as regards the CECAF's purpose, functions and responsibilities.

The purpose of the CECAF is to promote the sustainable utilisation of the living marine resources within its area for which it is responsible by the proper management and development of the fisheries and fishing operations. The Committee covers all living marine resources in the area covered by the CECAF, which runs from Cape Spartel to the mouth of the Congo River.

The European Union is a member of the CECAF[1], as are Greece, Spain, France, Italy, Netherlands, Poland, Romania.

### 2.2. The Fishery Committee for the Eastern Central Atlantic

The CECAF is a consultative technical and regional fisheries body (RFB) established under Article VI (2) of the FAO Constitution. The CECAF's Secretariat is managed and financed by the FAO. Its main functions include promoting, coordinating and facilitating scientific research, governance, and activities related to the conservation and management of living marine resources in the area for which it is responsible. The CECAF can also provide advice to its members on fisheries management, monitoring, control and surveillance. It also works to establish the scientific basis for regulatory measures leading to the conservation and management of marine fishery resources, and provides advice on the adoption of regulatory measures by member governments.

Sessions of the CECAF are normally held every two years. As a member, the EU is entitled to participate in, and vote on, its decisions. Decisions of the CECAF are taken by a majority of the votes cast, except as otherwise laid down in its rules of procedure.

### 2.3. Decisions adopted by the Fishery Committee for the Eastern Central Atlantic

Under the terms of reference of its revised statutes, the CECAF gives advice on management measures ('measures') to member governments and competent regional organisations. Because of its advisory status, the CECAF's decisions are not binding on its members.

[1] Council Decision of 25 November 1991 on the accession of the European Economic Community to the Food and Agriculture Organization of the United Nations (FAO).

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

Consistent with the procedures applicable to regional fisheries management organisations (RFMOs), the position to be adopted on behalf of the EU at the annual meetings of RFBs such as the CECAF shall be established using a two-tier approach. A Council Decision sets out the guiding principles of the EU's position on a multiannual basis, and it is subsequently adjusted before each annual meeting by Commission services non-papers to be endorsed by the Council.

For the CECAF, this approach is implemented by Council Decision (EU) 2019/1570 of 16 September 2019, which sets out the EU's position in the CECAF for the period 2019-2023. The Decision contains general principles, but also takes into account as far as possible, the specific features of the CECAF. In addition, it sets out the standard process for establishing the EU's position year by year, as requested by Member States.

Council Decision (EU) 2019/1570 incorporated the principles of the new common fisheries policy, as laid down in Regulation (EU) No 1380/2013 of the European Parliament and of the Council[2], also taking into account the objectives set out in the Commission Communication on the external dimension of the common fisheries policy[3]. Moreover, it adjusted the EU's position to the Treaty of Lisbon.

Council Decision (EU) 2019/1570 provides for an assessment, and where appropriate, a revision of the EU's position before the 2024 annual meeting. Therefore, this proposal sets out the EU's position in the CECAF for the period 2024-2028, thereby replacing Council Decision (EU) 2019/1570.

The current revision takes into consideration, in relation to fishing, the European Green Deal, notably Biodiversity[4], Climate Adaptation[5] and Farm to Fork Strategies[6]. It also takes into account the Plastics Strategy[7] and the Zero pollution Action Plan[8]. Furthermore, it also takes into consideration, the International Ocean Governance Joint Communication[9].

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2 Regulation (EU) No 1380/2013 of the European Parliament and of the Council 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).

3 COM(2011) 424, 13.7.2011.

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380).

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe — the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system (COM/2020/381)

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Strategy for Plastics in a Circular Economy COM(2018) 28 final.

8 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil COM/2021/400 final

9 Joint communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Setting the course for a sustainable blue planet JOIN/2022/28 final.

## 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 ('the Treaty') provides for decisions establishing 'the positions to be adopted on the EU'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. 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].

#### *4.1.2. Application to this case*

The CECAF is a technical and regional fisheries body set up by FAO resolution 1/48 of 1967, under Article VI (2) of the FAO Constitution. While the CECAF decisions ('measures') are not binding on its members, acts that the CECAF is called on to adopt do constitute acts capable of decisively influencing the content of the legislation adopted by the EU legislature.

The envisaged act does not supplement or amend the institutional framework of the agreement.

Therefore, the procedural legal basis for the proposed Decision is Article 218(9) of the Treaty.

### 4.2. Substantive legal basis

#### *4.2.1. Principles*

The substantive legal basis for a decision under Article 218(9) of the Treaty depends primarily on the objective and content of the envisaged act in respect of which a position is being taken on the EU'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) of the Treaty must have a single substantive legal basis, which is that required by the main aim or component.

#### *4.2.2. Application to this case*

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

Therefore, the substantive legal basis of the proposed Decision is Article 43(2) TFEU. The Decision will replace Council Decision (EU) 2019/1570, which covers the period 2019-2023.

### 4.3. Conclusion

The legal basis of the proposed Decision should therefore be Article 43(2) of the Treaty in conjunction with Article 218(9) of the Treaty.

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[10] Judgment of the Court of Justice of 7 October 2014, *Germany* v *Council*, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61-64.

2023/0269 (NLE)

Proposal for a

# COUNCIL DECISION

## on the position to be taken on behalf of the European Union in the Fishery Committee for the Eastern Central Atlantic and repealing Decision (EU) 2019/1570

**THE COUNCIL OF THE EUROPEAN UNION,**

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The European Union is a member of the Food and Agriculture Organization of the United Nations (FAO)[1] and of the Fishery Committee for the Eastern Central Atlantic (CECAF), a regional fishery committee of the FAO.

(2) The CECAF gives advice on management measures (hereinafter 'measures'). Because of its advisory status, its decisions are not binding on its members.

(3) Council Decision (EU) 2019/1570[2] provides for an assessment, and where appropriate, a revision of the EU's position before the 2024 annual meeting. The CECAF, during its next session is to give advice on measures on the conservation and management of living marine resources.

(4) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[3] 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 also provides that the Union is to apply the precautionary approach to fisheries management, and is to aim to ensure that exploitation of living marine biological resources restores and maintains population of harvested species above levels, which can produce the maximum sustainable yield. It further 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. Besides, Regulation (EU) No 1380/2013

[1] Council Decision of 25 November 1991 on the accession of the European Economic Community to the Food and Agriculture Organization of the United Nations (FAO) (OJ C 292, 9.11.1991, p. 8–12).

[2] Council Decision (EU) 2019/1570 of 16 September 2019 on the position to be taken on behalf of the European Union within the Fishery Committee for the Eastern Central Atlantic (CECAF) (OJ L 242, 20.9.2019, p. 20).

[3] 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).

specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations.

(5) In line with the Biodiversity[4], Climate Adaptation[5] and Farm to Fork Strategies[6], it is essential to protect nature and reverse the degradation of ecosystems. The risks stemming from climate change and loss of biodiversity must not jeopardise the availability of the goods and services that healthy marine ecosystems provide to fishers, coastal communities and humanity at large.

(6) The Plastics Strategy[7] refers to specific measures to reduce plastics and marine pollution as well as the loss or abandonment at sea of fishing gear. Furthermore, the Zero pollution Action Plan[8] aims at reducing by 50% plastic litter at sea and by 30% micro-plastics released into the environment.

(7) Currently the position to be taken on the Union's behalf in the meetings of the CECAF is established by Council Decision (EU) 2019/1570. It is appropriate to repeal that Decision and establish a new Decision for the period 2024-2028.

(8) Under the International Ocean Governance Joint Communication[9], marine biodiversity protection and conservation are key priorities under the EU's external action The EU is the most prominent actor in Regional Fisheries Management Organisations (RFMOs) and fisheries bodies worldwide. There, the EU promotes the sustainability of fish stocks, promotes transparent decision-making based on sound scientific advice, enhances scientific research, and strengthens compliance.

(9) In view of the evolving nature of fishery resources in the area of CECAF and the need for the Union's position to take account of new developments, including new scientific and other relevant information presented before or during the meetings of the CECAF, procedures should be established for the year-to-year specification of the Union's position in 2024-2028. Those positions should be in line with the principle of sincere cooperation among the Union institutions enshrined in Article 13(2) of the Treaty on the European Union.

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4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives (COM/2020/380).

5 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe — the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

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HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the sessions of the Fishery Committee for the Eastern Central Atlantic (CECAF) is set out in Annex I of this Decision.

*Article 2*

The year-to-year specification of the Union's position to be taken in the sessions of the CECAF shall be conducted in accordance with Annex II.

*Article 3*

The Union's position set out in Annex I shall be assessed and, where appropriate, revised by the Council upon a proposal from the Commission, at the latest before any session of the CECAF in 2024.

*Article 4*

Decision (EU) 2019/1570 is repealed.

*Article 5*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council*
*The President*