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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 August 2019
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 at the Second Ministerial Meeting of the Bonn Agreement with regard to the Bonn Agreement Strategic Action Plan (BASAP) 2019 – 2025 annexed to the Ministerial Declaration and with regard to the Ministerial Declaration

Delegations will find attached document COM(2019) 379 final.

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2019/0174 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the Second Ministerial Meeting of the Bonn Agreement with regard to the Bonn Agreement Strategic Action Plan (BASAP) 2019 – 2025 annexed to the Ministerial Declaration and with regard to the Ministerial Declaration

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the Union's behalf in the context of the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances ('Bonn Agreement') in connection with the envisaged adoption of the Ministerial Declaration and the Bonn Agreement Strategic Action Plan (BASAP) 2019 – 2025 annexed thereto.

2. CONTEXT OF THE PROPOSAL

2.1. The Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances

The Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances ('the Bonn Agreement' or 'the Agreement') aims to combat pollution in the North Sea Area by oil and other harmful substances and safeguard coastal areas from maritime disasters and chronic pollution from ships and offshore installations. The Agreement entered into force on 1 September 1989.

The European Union (then 'European Economic Community') is a Contracting Party to the Agreement (as amended)[1]. North Sea States of the European Union[2] together with Norway are also Contracting Parties to the Agreement.

2.2. The Bonn Agreement

The Agreement seeks to promote active cooperation and mutual assistance among coastal States and the European Union in combating pollution of the North Sea by oil and other harmful substances in order to protect the marine environment and the interests of coastal States. To that effect, the Agreement provides that Contracting Parties carry out surveillance as an aid to detecting and combating pollution and to preventing violations of anti-pollution regulations. Under the Bonn Agreement, the North Sea is divided into different zones where the responsibility for the surveillance and assessment of incidents is assigned to Contracting Parties. Contracting Parties are required to inform any other Contracting Party concerned of their becoming aware of the presence of oil or other harmful substances likely to constitute a serious threat to the coast or related interests of any other Contracting Party. Contracting Parties may require assistance to deal with pollution at sea or on their coasts, in which case the Contracting Parties called upon for help are required to use their best endeavours to bring such assistance as is within their power.

The Depositary Government of the Bonn Agreement is the Government of the Federal Republic of Germany (Article 18(3) Bonn Agreement).

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1 Council Decision 84/358/EEC of 28 June 1984 concerning the conclusion of the Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (OJ L 188, 16.7.1984, p.7). The Agreement was amended in 1989; those amendments entered into force on 1 April 1994. The European Economic Community approved those amendments by Council Decision 93/540/EEC of 18 October 1993 (OJ L 263, 22.10.1993, p.51).

2 Belgium, Denmark, France, Germany, Ireland, the Netherlands, Sweden, and the United Kingdom of Great Britain and Northern Ireland (status of ratifications on 10.4.2019).

Contracting Parties make decisions with respect to the Agreement, in accordance with the relevant provisions of the Bonn Agreement and the related Rules of Procedures; they are assisted by a Secretariat and subsidiary bodies (such as the Working Group on Operational, Technical and Scientific Questions Concerning Counter-Pollution Activities [OTSOPA]).

2.3. The envisaged act - The Ministerial Declaration and the Bonn Agreement Strategic Action Plan (BASAP) 2019 – 2025

The Agreement celebrates its 50th anniversary in 2019. On that occasion, the Contracting Parties intend to adopt a joint declaration during the Second Ministerial Meeting of the Bonn Agreement in the presence of Intergovernmental Organisations and Observers from neighbouring regions, responsible for dealing with pollution of the Greater North Sea and its approaches by oil and other harmful substances to be held in Bonn on 11 October 2019 ('the Ministerial Declaration').

Despite the overall decrease in the number of accidental oil spills in European waters, major accidental oil spills (i.e. those greater than 20 000 tonnes) still occur at irregular intervals. Although land-based discharges constitute the largest source of oil that enters the ocean each year, accidental oil spills are still a major source of pollution accounting for about 10–15 per cent of all oil that enters the ocean world-wide every year. Therefore, the Ministerial Declaration seeks to set out a common vision of a Greater North Sea and its approaches free from accidental, avoidable and deliberate pollution from shipping, offshore oil and gas operations and other maritime activities.

As a strong commitment to pursue such a vision, the Ministerial Declaration is to attest the re-invigorated efforts by the Contracting Parties to the Agreement to accomplish agreed objectives and to achieve better prevention, preparedness and response to marine pollution in the Greater North Sea and its approaches. To that effect, the Contracting Parties intend to adopt the Bonn Agreement Strategic Action Plan ('BASAP') 2019-2025 – to be annexed to the Ministerial Declaration – setting out ambitious strategic aims, operational objectives and actions for their implementation for the period 2019-2025.

The BASAP 2019-2025 is intended to facilitate the implementation of the Bonn Agreement. It sets the Vision, Strategic Aims and Operational Objectives as well as specific measurable actions and realistic targets for the period 2019-2025, to guide and focus the work of Contracting Parties. The BASAP acknowledges the need to maintain well-established systems and to continue the operational nature of the Agreement. At the same time, it articulates opportunities to enhance these efforts and to develop new directions.

The First Bonn Agreement Action Plan was agreed by the First Ministerial Meeting in Dublin in 2010. It was later renewed and updated for the periods of 2013-2016 and 2016-2019 during the meetings of the Contracting Parties of the Agreement.

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

The Union aims at a high level of environmental protection, notably through the promotion of measures at international level to deal with regional environmental problems[3]; it also seeks to encourage cooperation in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters, notably through the promotion of consistency in international civil protection work[4].

[3] Article 191 TFEU.
[4] Article 196 TFEU.

The Contracting Parties of the Bonn Agreement successfully cooperate regionally for 50 years in preventing and combating marine pollution in the Greater North Sea from ships and offshore installations. The Bonn Agreement work covers scientific, technical and operational activities. The Contracting Parties have achieved great expertise in handling threats to the marine environment and are ready to meet new challenges. The BASAP 2019-2025 will guide and focus the on-going and the new tasks with the endorsement by the Ministerial Declaration.

The Union is a Contracting Party to the Bonn Agreement and is interested in enhancing regional cooperation in dealing with pollution of the Greater North Sea and its approaches. The Union should therefore support the adoption of the 2019 Ministerial Declaration, which will imply in turn endorsement of the Strategic Action Plan 2019-2025 annexed thereto, in accordance with the applicable Union procedure under Article 218 (9) TFEU.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

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

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. 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*'[5].

4.1.2. Application to the present case

The Ministerial Meeting is the Meeting of the Contracting Parties at ministerial level. It is convened on *ad hoc* basis on the occasion of the 50th anniversary of the Bonn Agreement and the envisaged changes thereto.

The 2nd Ministerial Meeting of the Contracting Parties takes place on 11 October 2019. That meeting is to adopt a Ministerial Declaration to attest the re-invigorated efforts by the Contracting Parties to the Agreement to accomplish agreed objectives and to achieve better prevention, preparedness and response to marine pollution in the Greater North Sea and its approaches. To that effect, the Contracting Parties intend to adopt the Bonn Agreement Strategic Action Plan ('BASAP') 2019-2025 – to be annexed to the Ministerial Declaration – setting out ambitious strategic aims, operational objectives and actions for their implementation for the period 2019-2025.

The BASAP 2019-2025 has legal effects on the Contracting Parties. It will guide and focus the on-going and the new tasks with the endorsement by the Ministerial Declaration. It is intended to facilitate the implementation of the Bonn Agreement, by setting the Vision, Strategic Aims and Operational Objectives of the Agreement as well as specific measurable actions and realistic targets to be achieved by the Contracting Parties for the period 2019-2025, in order to guide and focus the work of Contracting Parties. The BASAP acknowledges the need to maintain well-established systems and to continue the operational nature of the

[5] 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.

Agreement. At the same time, it articulates opportunities to enhance these efforts and to develop new directions.

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) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

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

With regard to an envisaged act that simultaneously pursues a number of objectives, or that has several components, which are inseparably linked without one being incidental to the other, the substantive legal basis of a decision under Article 218(9) TFEU will have to include, exceptionally, the various corresponding legal bases.

4.2.2. Application to the present case

The draft Bonn Agreement Strategic Action Plan (BASAP) 2019 – 2025 pursues objectives and has components in the areas of environmental protection and international civil protection cooperation. These elements of the envisaged act are inseparably linked without one being incidental to the other while promoting further consistency in international civil protection work[6].

Therefore, the substantive legal basis of the proposed decision comprises the following provisions: Article 191 TFEU and Article 196 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 191 TFEU and Article 196 TFEU in conjunction with Article 218(9) TFEU.

5. PUBLICATION OF THE ENVISAGED ACT

As the result of the decisions of the Meeting of the Contracting Parties will be to amend the Bonn Agreement, it is appropriate to publish them in the *Official Journal of the European Union* after their adoption.

[6] Notably as Contracting Parties to the Bonn Agreement could rely on the Union Civil Protection Mechanism (see Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 - OJ L 347, 20.12.2013, p. 924).

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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 196 and 191, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances ('the Bonn Agreement' or 'the Agreement') was concluded by the Union (then 'European Economic Community') by Council Decision 84/358/EEC of 28 June 1984[7]. The Agreement entered into force on 1 September 1989. The Agreement was amended in 1989; those amendments entered into force on 1 April 1994. The Union (then 'European Economic Community') approved those amendments by Council Decision 93/540/EEC of 18 October 1993[8].

(2) The Agreement celebrates its 50th anniversary in 2019. On that occasion, the Contracting Parties intend to adopt a Ministerial Declaration during the Second Ministerial Meeting of the Bonn Agreement in the presence of Intergovernmental Organisations and Observers from neighbouring regions, responsible for dealing with pollution of the Greater North Sea and its approaches by oil and other harmful substances to be held in Bonn on 11 October 2019 ('the Ministerial Declaration').

(3) Acknowledging 50 years of successful cooperation within the framework of the Bonn Agreement and recognising the common benefit of further invigorating regional cooperation to prevent, prepare for and respond to accidental and illegal marine pollution from maritime activities in the Greater North Sea and its approaches, the 2019 Ministerial Declaration seeks to set out a common vision of a Greater North Sea and its approaches free from accidental, avoidable and deliberate pollution from shipping, offshore oil and gas operations and other maritime activities.

(4) As a strong commitment to pursue such a vision, the Ministerial Declaration is to attest the re-invigorated efforts by the Contracting Parties to the Agreement to accomplish agreed objectives and to achieve better prevention, preparedness and response to marine pollution in the Greater North Sea and its approaches. To that effect, the Contracting Parties intend to adopt the Bonn Agreement Strategic Action Plan 2019-2025 – to be annexed to the Ministerial Declaration – setting out ambitious

[7] OJ L 188, 16.7.1984, p. 7.
[8] OJ L 263, 22.10.1993, p.51.

strategic aims, operational objectives and actions for their implementation for the period 2019-2025.

(5) It is important to establish the position to be taken on the Union's behalf during the Second Ministerial Meeting of the Bonn Agreement, as the decision to be adopted at the meeting will produce legal effect towards the Union.

(6) As the Union is a Contracting Party to the Bonn Agreement and is interested in enhancing cooperation in dealing with pollution of the Greater North Sea and its approaches, it is appropriate to sign and support the 2019 Ministerial Declaration, which endorses the Strategic Action Plan 2019-2025 annexed thereto.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf at the Ministerial Meeting shall be to support the adoption of the Ministerial Declaration and the Bonn Agreement Strategic Action Plan (BASAP) 2019 – 2025 annexed thereto.

Minor changes may be brought to the the text of the draft Bonn Agreement Strategic Action Plan (BASAP) 2019 – 2025 without calling into question the support of the Union.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President