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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	14 October 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 signing, on behalf of the European Union, and the provisional application of the Protocol to amend the International Convention for the Conservation of Atlantic Tunas

Delegations will find attached document COM(2019) 470 final.

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EUROPEAN
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COM(2019) 470 final

2019/0223 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and the provisional application of the Protocol to amend the International Convention for the Conservation of Atlantic Tunas

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The International Convention for the Conservation of Atlantic Tunas (ICCAT Convention) aims, by establishing the ICCAT, to promote cooperation in maintaining the populations of tuna and tuna-like fish in the Atlantic Ocean at levels that permit the maximum sustainable catch for food and other purposes. The Convention entered into force on 21 March 1969. The Union is a party to the Convention, having approved it pursuant to the Council Decision of 9 June 1986[1].

The International Commission for the Conservation of Atlantic Tunas (ICCAT Commission) is the body established by the ICCAT Convention for the conservation and management of the species under its purview. The ICCAT Commission has the authority to adopt recommendations that are binding on the Contracting Parties. As a Contracting Party to the ICCAT Convention, the Union is a Member of the ICCAT Commission where it has participation and voting rights.

In order to improve its effectiveness and strengthen the conservation and management of species under its purview, the ICCAT Commission has agreed on the need to amend the Convention. On 13 May 2013, the Council authorised the Commission to negotiate, on behalf of the European Union, amendments to the Convention[2].

From 2013 to 2018, discussions have taken place within the ICCAT Commission on the changes that are needed to the Convention. As a result, a Protocol has been drafted to amend to the Convention. The main amendments, once in force, will:

(1) broaden the scope of the Convention as regards shark conservation and management;

(2) clarify voting rules and quorum in the ICCAT Commission, in particular majority requirements in situations where consensus cannot be achieved;

(3) define the principles according to which the ICCAT Commission and its Members shall act in conducting work under the ICCAT Convention;

(4) shorten the entry into effect period for recommendations adopted by the ICCAT Commission from six to four months after notification to ICCAT Members;

(5) clarify the use of the objection procedure for recommendations adopted by the ICCAT Commission;

(6) enable the enhanced participation of Cooperating Non-Contracting Parties and fishing entities in the work of the ICCAT Commission; and

(7) introduce an ICCAT dispute settlement mechanism which is voluntary, but the outcome of which will be final and binding on the parties that have recourse to it.

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1 Council Decision of 9 June 1986 on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984 (OJ L 162, 18.6.1986, p. 33).

2 Council Decision of 13 May 2013 authorising the Commission to open negotiations on behalf of the European Union on amendments to the International Convention for the Conservation of Atlantic Tunas.

The amendment of the Convention is also used as an opportunity to eliminate slight variations between the English, French and Spanish language versions of the Convention, each version being equally authentic. The Protocol therefore captures all provisions that are to be amended in any one of the three language versions.

The Protocol will be adopted by the Contracting Parties at the 28th Regular meeting of the ICCAT Commission from 18 to 25 November 2019.

The present proposal is for a Council Decision to authorise the signing, on behalf of the Union, and provisional application of the Protocol. Article 13 of the Protocol provides for its entry into force for each Contracting Party accepting it on the ninetieth after the deposit with the Director-General of the Food and Agricultural Organisation of the United Nations of an instrument of acceptance by three-fourths of the Contracting Parties, and thereafter for each remaining Contracting Party upon acceptance by it. It is therefore necessary to provide for the provisional application of the Protocol in the event that it enters into force before the Union has completed its internal ratification procedures. Provisional application is also in line with the Council Decision authorising the Commission to negotiate the Convention amendments.

The Protocol forms part of a wider package that also includes:

(1) a *Resolution by ICCAT regarding participation by fishing entities under the amended* ICCAT Convention. This Resolution clarifies Convention amendments on non-party participation in particular that Chinese Taipei is the fishing entity that is intended to be covered by the Annex 2 on Fishing Entities, which is added to the Convention by Article 11 of the Protocol; and

(2) a Recommendation by ICCAT on fishes considered to be tuna and tuna-like species or oceanic, pelagic, and highly migratory elasmobranchs. The Recommendation clarifies the species that are covered by the Convention, in particular by expressly defining 'ICCAT species' as including elasmobranchs (sharks and rays) that are oceanic, pelagic and highly migratory.

The Resolution and Recommendation are to be adopted by the ICCAT Commission concurrently with the adoption of the Protocol by the Contracting Parties. In accordance with Article VIII, paragraph 2 of the ICCAT Convention, the Recommendation will become effective six months after the date on which the Contracting Parties have been notified of it. The Recommendation will not be binding on a Contracting Party if it has submitted and reaffirmed an objection to it. If the objection is supported by a majority of the Contracting Parties, the Recommendation does not come into effect.

- **Consistency with existing policy provisions in the policy area**

Regional Fisheries Management Organisations (RFMOs) are international organisations of countries, some of which are coastal states; regional integration organisations, such as the EU; and fishing entities with fishing interests in a given area. Some RFMOs manage all the fish stocks within a specific area, while others focus on particular highly migratory species, notably tuna, throughout vast geographical areas. While some are purely advisory, most have management powers to set catch and fishing effort limits, technical measures, and control obligations.

The European Union, represented by the European Commission, supports and actively contributes to the work of the ICCAT, in line with Commission Communication on

'Participation in regional fisheries organisations (RFOs)'[3], Article 29 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy[4] and the Council conclusions of 19 March 2012 on the Commission Communication on the 'External dimension of the Common Fisheries Policy'[5]. The Convention amendments are necessary to ensure the sustainable exploitation, management and conservation of marine biological resources and the marine environment managed by the ICCAT, as well as of species caught in the context of fishing activities targeting ICCAT species.

- **Consistency with other Union policies**

In accordance with the Joint Communication by the High Representative of the EU for Foreign Affairs and Security Policy and the European Commission 'International ocean governance: an agenda for the future of oceans'[6] and the Council conclusions on that Joint Communication[7], promoting measures to support and enhance the effectiveness of RFMOs and, where relevant, improve their governance is a central feature of the Union's action in these fora.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal for a Council Decision is based on the Treaty on the Functioning of the European Union, and in particular Article 43(2), in conjunction with Article 218(5).

Regulation (EU) No 1380/2013[8] of the European Parliament and of the Council is the legal basis for the principles to be reflected in this position.

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

The proposal does not go beyond what is necessary to achieve the objective pursued, namely the signing and provisional application of the Protocol by the Union.

- **Choice of the instrument**

Article 218(5) of the Treaty on the Functioning of the European Union requires a proposal from the Commission for the Council to adopt a decision authorising the signing of the Protocol and, if necessary, its provisional application before entry into force.

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3 COM/99/0613 final.

4 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).

5 COM(2011) 424 of 13.7.2011.

6 JOIN(2016) 49 final.

7 7348/1/17 REV 1.

8 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. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

On 13 May 2013, the Council authorised the Commission to negotiate, on behalf of the European Union, amendments to the Convention.

The amendments were prepared during six meetings of the Working Group on Convention Amendment established for this purpose by the ICCAT, the first of which took place from 10 to 12 July 2013 and the last from 24 to 25 May 2018. Member States were kept informed of progress in the negotiations.

- **Collection and use of expertise**

The Commission drew on expertise from Member States in the preparations for, as well as during the negotiations in ICCAT on the amendments to the Convention.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

This proposal does not entail additional costs for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Not applicable.

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COUNCIL DECISION

on the signing, on behalf of the European Union, and the provisional application of the Protocol to amend the International Convention for the Conservation of Atlantic Tunas

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(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 13 May 2013, the Council authorised the European Commission to open negotiations on amendments to the International Convention for the Conservation of Atlantic Tunas (ICCAT Convention)[9]. These negotiations were successfully concluded in November 2018.

(2) The resulting Protocol should improve the effectiveness of the ICCAT and strengthen the conservation and management of species under its purview.

(3) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[10] 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. Moreover, Regulation (EU) No 1380/2013 specifically provides that those objectives and principles are to be applied by the Union in the conduct of its external fisheries relations. The Protocol is consistent with these objectives.

(4) As stated in the Joint communication by the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission on *International*

[9] Council Decision of 13 May 2013 authorising the Commission to open negotiations on behalf of the European Union on amendments to the International Convention for the Conservation of Atlantic Tunas (the ICCAT convention)

[10] 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).

ocean governance: an agenda for the future of oceans[11], and the Council conclusions on that Joint communication[12], the promotion of measures to support and enhance the effectiveness of regional fisheries management organisations (RFMOs) and, where relevant, improve their governance is central to the Union's action in these fora. The Protocol is fully in line with these aims.

(5) The Protocol should be signed on behalf of the Union, and applied on a provisional basis, pending the completion of the procedures necessary for its conclusion.

(6) In view of the possibility that the Protocol enters into force before the Union has completed its internal ratification procedures, it should be applied provisionally,

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Protocol to amend the International Convention for the Conservation of Atlantic Tunas ("the Protocol") is hereby authorised, subject to the conclusion of the said Protocol.

The text of the Protocol to be signed is attached to this Decision.

Article 2

The Council Secretariat General shall establish the instrument of full powers to sign the Protocol subject to its conclusion, for the person(s) indicated by the negotiator of the Protocol.

Article 3

The Protocol shall be applied provisionally, in accordance with Article 13 of the Protocol, pending its entry into force.

Article 4

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

[11] JOIN(2016) 49 final of 10.11.2016.
[12] 7348/1/17 REV 1 of 24.3.2017.