



Brussels, 20 January 2021
(OR. en)

5237/21
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PECHE 10
UK 11
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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	11418/20 INIT + ADD 1
Subject:	Recommendation for a Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland and with the Kingdom of Norway for a fisheries agreement - Adoption

Statement from the Commission

The Commission considers that the present authorisation should not, in light of the urgency to start the negotiations for the year 2021 and the fulfilment of the obligations under UNCLOS, constrain the Commission to start negotiations on the trilateral mandate at the moment it sees appropriate in light of the state of play of the negotiations with the United Kingdom on the overall economic partnership and the future fisheries relation with the UK.

The Commission considers that the introduction of the consultation and reporting requirement procedurally burdens the Commission's negotiations powers and risks to adversely impact the outcome of the negotiations. Such requirements are not procedural practice under the negotiating directives for other fisheries agreements with third countries in the North-east Atlantic.

In view of the addition of Article 43 TFEU in addition to Article 218 (3&4) TFEU as a legal basis, the Commission considers it legally incorrect that a Council Decision authorising the opening of negotiations indicates a substantive legal basis.

The Decision authorising the opening of negotiations is premised solely on the existence of conferred powers of the Union and not on a determination of a specific competence. Its effect is limited to authorising the Commission or the High Representative, as the case may be, to use its prerogatives under the EU Treaties in order to start negotiations. The scope of these negotiations is therefore determined by the scope of the powers of the Union. Besides, the freedom of the envisaged treaty partner of the Union as regards the determination of the scope of the negotiations cannot be limited by the Council Decision authorising the opening of the negotiations. Thus, the precise legal basis for the future agreement can only be determined after the content of the agreement is known.

The Commission reserves all its rights in this regard.
